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Attorneys for Plaintiff/Counterclaim Defendant RAMBUS INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

RAMBUS INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,  
SAMSUNG ELECTRONICS AMERICA, INC.,  
SAMSUNG SEMICONDUCTOR, INC.,  
SAMSUNG AUSTIN SEMICONDUCTOR, L.P.,

Defendants.

AND RELATED CROSS-ACTIONS.

CASE NO. C 05 02298 RMW

**RAMBUS INC.'S REPLY TO  
SAMSUNG'S SECOND AMENDED  
ANSWER AND COUNTERCLAIMS**

1 Rambus Inc. (“Rambus”) replies to the Second Amended Counterclaims asserted by  
2 Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor,  
3 Inc., and Samsung Austin Semiconductor, L.P. (collectively “Samsung”) as follows:

4 **INCORPORATED ALLEGATIONS**

5 Rambus hereby replies to the allegations in Samsung’s Second Amended Answer that are  
6 incorporated by reference by Samsung in Samsung’s Second Amended Counterclaims, in  
7 corresponding numbered paragraphs as follows:

8 **PARTIES**

9 **PARAGRAPH NO. 1:**

10 Defendants admit that Rambus is a corporation organized and existing under the laws of  
11 Delaware. Defendants lack sufficient knowledge to admit or deny the remaining allegations in  
12 Paragraph 1 of the Complaint, and, on that basis, deny the same.

13 **RESPONSE TO PARAGRAPH NO. 1:**

14 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
15 Rambus’s First Amended Complaint into its Second Amended Counterclaims. As to these  
16 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus’s allegations and  
17 deny certain of Rambus’s allegations as stated therein. Rambus denies, however, that Samsung’s  
18 denials are well taken.

19 **PARAGRAPH NO. 2:**

20 Defendants admit that Samsung Electronics Co., Ltd. is a corporation organized and  
21 existing under the laws of Korea, with a principal place of business at 250, 2-Ka, Taepyung-Ro,  
22 Chung-Ku, Seoul, South Korea, 100-742. Defendants admit that Samsung Electronics America,  
23 Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd., with its principal place of  
24 business at 105 Challenger Road, Ridgefield Park, NJ 07660. Defendants admit that Samsung  
25 Semiconductor, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd., with its  
26 principal place of business at 3655 North First Street, San Jose, CA 95134. Defendants admit that  
27 Samsung Austin Semiconductor, L.P. is a limited partnership owned by Samsung Electronics Co.,  
28 Ltd., with its principal place of business at 12100 Samsung Boulevard, Austin, TX 78754.

Defendants deny that they transact substantial business in this district on an ongoing basis.

**RESPONSE TO PARAGRAPH NO. 2:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 3:**

Defendants deny the allegations in Paragraph 3 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 3:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**NATURE OF THE ACTION**

**PARAGRAPH NO. 4:**

Defendants admit that the Complaint purports to be an action for patent infringement, but deny any wrongdoing or liability.

**RESPONSE TO PARAGRAPH NO. 4:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 5:**

Defendants deny the allegations in Paragraph 5 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 5:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**JURISDICTION AND VENUE****PARAGRAPH NO. 6:**

Defendants admit that the Complaint purports to be an action for patent infringement, but deny any wrongdoing or liability. Defendants admit that this Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

**RESPONSE TO PARAGRAPH NO. 6:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 7:**

Defendants do not contest personal jurisdiction in this Court. To the extent not expressly admitted herein, Defendants deny the remaining allegations of Paragraph 7 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 7:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 8:**

Defendants do not contest that venue is proper in this Court. To the extent not expressly

1 admitted herein, Defendants deny the remaining allegations of Paragraph 8 of the Complaint.

2 **RESPONSE TO PARAGRAPH NO. 8:**

3 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
4 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
5 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
6 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
7 denials are well taken.

8 **PURPORTED FACTUAL BACKGROUND**

9 **PARAGRAPH NO. 9:**

10 Defendants admit that Rambus has executed licenses in the past. To the extent not  
11 expressly admitted herein, Defendants deny the remaining allegations in Paragraph 9 of the  
12 Complaint.

13 **RESPONSE TO PARAGRAPH NO. 9:**

14 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
15 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
16 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
17 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
18 denials are well taken.

19 **PARAGRAPH NO. 10:**

20 Defendants admit that they are each in one way or another in the business of, *inter alia*,  
21 making, using, selling, importing, and/or offering for sale SDR SDRAM components or modules,  
22 Mobile-SDR SDRAM components, SDR SGRAM components, DDR SDRAM components and  
23 modules, Mobile-DDR SDRAM components, DDR SGRAM components, GDDR1 SDRAM  
24 components, and Uni-Transistor RAM components. Defendants lack sufficient information to  
25 admit or deny the remaining allegations in Paragraph 10 of the Complaint, and on that basis, deny  
26 the same.

27 **RESPONSE TO PARAGRAPH NO. 10:**

28 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to

1 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
2 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
3 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
4 denials are well taken.

5 **PARAGRAPH NO. 11:**

6 Defendants admit that they have each in one way or another made, used, sold, imported,  
7 or offered for sale products consisting of or including SDR SDRAM components or modules,  
8 Mobile-SDR SDRAM components, SDR SGRAM components, DDR SDRAM components and  
9 modules, Mobile-DDR SDRAM components, DDR SGRAM components, GDDR1 SDRAM  
10 components, and Uni-Transistor RAM components. Defendants lack sufficient information to  
11 admit or deny the remaining allegations in Paragraph 11 of the Complaint, and on that basis, deny  
12 the same.

13 **RESPONSE TO PARAGRAPH NO. 11:**

14 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
15 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
16 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
17 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
18 denials are well taken.

19 **PARAGRAPH NO. 12:**

20 Defendants admit that on its face, U.S. Patent No. 5,915,105 (the "'105 Patent") purports  
21 to have issued on June 22, 1999, and to be entitled "Integrated Circuit I/O Using a High  
22 Performance Bus Interface," but deny it was duly and legally issued. All other allegations of  
23 Paragraph 12 not specifically admitted herein are denied.

24 **RESPONSE TO PARAGRAPH NO. 12:**

25 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
26 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
27 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
28 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's

1 denials are well taken.

2 **PARAGRAPH NO. 13:**

3 Defendants admit that on its face, U.S. Patent No. 5,953,263 (the “’263 Patent”) purports  
4 to have issued on September 14, 1999, and to be entitled “Synchronous Memory Device Having a  
5 Programmable Register and Method of Controlling Same,” but deny it was duly and legally  
6 issued. All other allegations of Paragraph 13 not specifically admitted herein are denied.

7 **RESPONSE TO PARAGRAPH NO. 13:**

8 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
9 Rambus’s First Amended Complaint into its Second Amended Counterclaims. As to these  
10 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus’s allegations and  
11 deny certain of Rambus’s allegations as stated therein. Rambus denies, however, that Samsung’s  
12 denials are well taken.

13 **PARAGRAPH NO. 14:**

14 Defendants admit that on its face, U.S. Patent No. 6,034,918 (the “’918 Patent”) purports  
15 to have issued on March 7, 2000, and to be entitled “Method of Operating a Memory Having a  
16 Variable Data Output Length and a Programmable Register,” but deny it was duly and legally  
17 issued. All other allegations of Paragraph 14 not specifically admitted herein are denied.

18 **RESPONSE TO PARAGRAPH NO. 14:**

19 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
20 Rambus’s First Amended Complaint into its Second Amended Counterclaims. As to these  
21 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus’s allegations and  
22 deny certain of Rambus’s allegations as stated therein. Rambus denies, however, that Samsung’s  
23 denials are well taken.

24 **PARAGRAPH NO. 15:**

25 Defendants admit that on its face, U.S. Patent No. 6,038,195 (the “’195 Patent”) purports  
26 to have issued on March 14, 2000, and to be entitled “Synchronous Memory Device Having a  
27 Delay Time Register and Method of Operating Same,” but deny it was duly and legally issued.  
28 All other allegations of Paragraph 15 not specifically admitted herein are denied.

**RESPONSE TO PARAGRAPH NO. 15:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 16:**

Defendants admit that on its face, U.S. Patent No. 6,067,592 (the "'592 Patent") purports to have issued on May 23, 2000, and to be entitled "System Having a Synchronous Memory Device," but deny it was duly and legally issued. All other allegations of Paragraph 16 not specifically admitted herein are denied.

**RESPONSE TO PARAGRAPH NO. 16:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 17:**

Defendants admit that on its face, U.S. Patent No. 6,101,152 (the "'152 Patent") purports to have issued on August 8, 2000, and to be entitled "Method Of Operating A Synchronous Memory Device," but deny it was duly and legally issued. All other allegations of Paragraph 17 not specifically admitted herein are denied.

**RESPONSE TO PARAGRAPH NO. 17:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.



1 **PARAGRAPH NO. 18:**

2 Defendants admit that on its face, U.S. Patent No. 6,324,120 (the "'120 Patent") purports  
3 to have issued on November 27, 2001, and to be entitled "Memory Device Having a Variable  
4 Data Output Length," but deny it was duly and legally issued. All other allegations of Paragraph  
5 18 not specifically admitted herein are denied.

6 **RESPONSE TO PARAGRAPH NO. 18:**

7 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
8 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
9 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
10 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
11 denials are well taken.

12 **PARAGRAPH NO. 19:**

13 Defendants admit that on its face, U.S. Patent No. 6,378,020 (the "'020 Patent") purports  
14 to have issued on April 23, 2002, and to be entitled "System Having Double Data Transfer Rate  
15 and Intergrated [*sic*] Circuit Therefor," but deny it was duly and legally issued. All other  
16 allegations of Paragraph 19 not specifically admitted herein are denied.

17 **RESPONSE TO PARAGRAPH NO. 19:**

18 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
19 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
20 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
21 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
22 denials are well taken.

23 **PARAGRAPH NO. 20:**

24 Defendants admit that on its face, U.S. Patent No. 6,426,916 (the "'916 Patent") purports  
25 to have issued on July 30, 2002, and to be entitled "Memory Device Having a Variable Data  
26 Output Length and a Programmable Register," but deny it was duly and legally issued. All other  
27 allegations of Paragraph 20 not specifically admitted herein are denied.  
28

1     **RESPONSE TO PARAGRAPH NO. 20:**

2             Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
3     Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
4     paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
5     deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
6     denials are well taken.

7     **PARAGRAPH NO. 21:**

8             Defendants admit that on its face, U.S. Patent No. 6,452,863 (the "'863 Patent") purports  
9     to have issued on September 17, 2002, and to be entitled "Method Of Operating a Memory  
10    Device Having a Variable Data Input Length," but deny it was duly and legally issued. All other  
11   allegations of Paragraph 21 not specifically admitted herein are denied.

12    **RESPONSE TO PARAGRAPH NO. 21:**

13            Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
14    Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
15    paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
16    deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
17    denials are well taken.

18    **PARAGRAPH NO. 22:**

19            Defendants admit the allegations in Paragraph 22 of the Complaint.

20    **RESPONSE TO PARAGRAPH NO. 22:**

21            Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
22    Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
23    paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
24    deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
25    denials are well taken.

26    **PARAGRAPH NO. 23:**

27            Defendants deny the allegations in Paragraph 23 of the Complaint.

1     **RESPONSE TO PARAGRAPH NO. 23:**

2             Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
3     Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
4     paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
5     deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
6     denials are well taken.

7     **PARAGRAPH NO. 24:**

8             Defendants deny the allegations in Paragraph 24 of the Complaint.

9     **RESPONSE TO PARAGRAPH NO. 24:**

10            Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
11     Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
12     paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
13     deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
14     denials are well taken.

15    **PARAGRAPH NO. 25:**

16            Defendants deny the allegations in Paragraph 25 of the Complaint.

17    **RESPONSE TO PARAGRAPH NO. 25:**

18            Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
19     Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
20     paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
21     deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
22     denials are well taken.

23    **PARAGRAPH NO. 26:**

24            Defendants lack sufficient information to admit or deny the allegations in Paragraph 26 of  
25     the Complaint, and on that basis, deny the same.

26    **RESPONSE TO PARAGRAPH NO. 26:**

27            Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
28     Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these

1 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
2 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
3 denials are well taken.

4 **PARAGRAPH NO. 27:**

5 Defendants deny the allegations in Paragraph 27 of the Complaint.

6 **RESPONSE TO PARAGRAPH NO. 27:**

7 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
8 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
9 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
10 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
11 denials are well taken.

12 **PARAGRAPH NO. 28:**

13 Defendants deny the allegations in Paragraph 28 of the Complaint.

14 **RESPONSE TO PARAGRAPH NO. 28:**

15 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
16 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
17 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
18 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
19 denials are well taken.

20 **COUNT 1: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,915,105**

21 **PARAGRAPH NO. 29:**

22 Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-28  
23 above.

24 **RESPONSE TO PARAGRAPH NO. 29:**

25 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
26 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
27 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
28 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's

1 denials are well taken.

2 **PARAGRAPH NO. 30:**

3 Defendants deny the allegations in Paragraph 30 of the Complaint.

4 **RESPONSE TO PARAGRAPH NO. 30:**

5 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
6 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
7 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
8 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
9 denials are well taken.

10 **COUNT 2: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,953,263**

11 **PARAGRAPH NO. 31:**

12 Defendants refer to and incorporate herein its answers as provided in Paragraphs 1-30  
13 above.

14 **RESPONSE TO PARAGRAPH NO. 31:**

15 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
16 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
17 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
18 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
19 denials are well taken.

20 **PARAGRAPH NO. 32:**

21 Defendants deny the allegations in Paragraph 32 of the Complaint.

22 **RESPONSE TO PARAGRAPH NO. 32:**

23 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
24 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
25 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
26 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
27 denials are well taken.

**COUNT 3: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,034,918**

**PARAGRAPH NO. 33:**

Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-32 above.

**RESPONSE TO PARAGRAPH NO. 33:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 34:**

Defendants deny the allegations in Paragraph 34 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 34:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**COUNT 4: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,038,195**

**PARAGRAPH NO. 35:**

Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-34 above.

**RESPONSE TO PARAGRAPH NO. 35:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 36:**

Defendants deny the allegations in Paragraph 36 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 36:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**COUNT 5: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,067,592**

**PARAGRAPH NO. 37:**

Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-36 above.

**RESPONSE TO PARAGRAPH NO. 37:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 38:**

Defendants deny the allegations in Paragraph 38 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 38:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**COUNT 6: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,101,152**

**PARAGRAPH NO. 39:**

Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-38 above.

**RESPONSE TO PARAGRAPH NO. 39:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 40:**

Defendants deny the allegations in Paragraph 40 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 40:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**COUNT 7: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,324,120**

**PARAGRAPH NO. 41:**

Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-40 above.

**RESPONSE TO PARAGRAPH NO. 41:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.



1 **PARAGRAPH NO. 42:**

2 Defendants deny the allegations in Paragraph 42 of the Complaint.

3 **RESPONSE TO PARAGRAPH NO. 42:**

4 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
5 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
6 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
7 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
8 denials are well taken.

9 **COUNT 8: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,378,020**

10 **PARAGRAPH NO. 43:**

11 Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-42  
12 above.

13 **RESPONSE TO PARAGRAPH NO. 43:**

14 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
15 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
16 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
17 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
18 denials are well taken.

19 **PARAGRAPH NO. 44:**

20 Defendants deny the allegations in Paragraph 44 of the Complaint.

21 **RESPONSE TO PARAGRAPH NO. 44:**

22 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
23 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
24 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
25 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
26 denials are well taken.

**COUNT 9: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,426,916**

**PARAGRAPH NO. 45:**

Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-44 above.

**RESPONSE TO PARAGRAPH NO. 45:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**PARAGRAPH NO. 46:**

Defendants deny the allegations in Paragraph 46 of the Complaint.

**RESPONSE TO PARAGRAPH NO. 46:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

**COUNT 10: DENIAL OF ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,452,863**

**PARAGRAPH NO. 47:**

Defendants refer to and incorporate herein their answers as provided in Paragraphs 1-46 above.

**RESPONSE TO PARAGRAPH NO. 47:**

Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's denials are well taken.

1 **PARAGRAPH NO. 48:**

2 Defendants deny the allegations in Paragraph 48 of the Complaint.

3 **RESPONSE TO PARAGRAPH NO. 48:**

4 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
5 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
6 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
7 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
8 denials are well taken.

9 **DENIAL OF RAMBUS'S PRAYER FOR RELIEF**

10 **PARAGRAPH NO. 49:**

11 Defendants deny that Rambus is entitled to be awarded any of the relief sought in its  
12 prayer for relief against Defendants. Defendants have not directly, indirectly, contributorily,  
13 and/or by inducement, literally and/or by the doctrine of equivalents, infringed— willfully or  
14 otherwise—any of the patents asserted by Rambus. Rambus is not entitled to recover statutory  
15 damages, compensatory damages, or accounting, injunctive relief, costs, fees, interest, or any  
16 other type of recovery from Defendants. Rambus's prayer should, therefore, be denied in its  
17 entirety and with prejudice, and Rambus should take nothing therefore. Defendants asks that  
18 judgment be entered for them and that they be awarded attorneys' fees in defending against the  
19 Complaint, together with such other and further relief the Court deems appropriate.

20 **RESPONSE TO PARAGRAPH NO. 49:**

21 Samsung has incorporated paragraph nos. 1-49 of its Second Amended Answer to  
22 Rambus's First Amended Complaint into its Second Amended Counterclaims. As to these  
23 paragraphs, Rambus admits that Samsung purports to admit certain of Rambus's allegations and  
24 deny certain of Rambus's allegations as stated therein. Rambus denies, however, that Samsung's  
25 denials are well taken.

**First Affirmative Defense – Failure to State a Claim**

**PARAGRAPH NO. 50:**

The Complaint fails to state a claim upon which relief can be granted because Defendants have not performed any act or thing and are not proposing to perform any act or thing in violation of any rights validly belonging to Plaintiff.

**RESPONSE TO PARAGRAPH NO. 50:**

Rambus denies the allegations contained in paragraph no. 50.

**Second Affirmative Defense – Noninfringement**

**PARAGRAPH NO. 51:**

The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are invalid and unenforceable, as set forth herein.

**RESPONSE TO PARAGRAPH NO. 51:**

Rambus denies the allegations contained in paragraph no. 51.

**PARAGRAPH NO. 52:**

Defendants do not infringe and have not infringed, either directly or indirectly, do not and have not contributed to infringement, and do not and have not induced the infringement of any claim of the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents.

**RESPONSE TO PARAGRAPH NO. 52:**

Rambus denies the allegations contained in paragraph no. 52.

**Third Affirmative Defense – Patent Invalidity**

**PARAGRAPH NO. 53:**

The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are invalid for failure to meet the “Conditions for Patentability” of 35 U.S.C. §§ 102 and 103 because the alleged inventions thereof are taught by, suggested by, and/or are obvious in view of, the prior art, and no claim of the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents can be validly construed to cover any Samsung device, system or operating method related to DRAM memory.

1 **RESPONSE TO PARAGRAPH NO. 53:**

2 Rambus denies the allegations contained in paragraph no. 53.

3 **PARAGRAPH NO. 54:**

4 The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are invalid for  
5 failure to meet the "Specification" requirements of 35 U.S.C. § 112 because the written  
6 specifications thereof do not describe the alleged inventions and the manner and process of  
7 making and using them in the form required by § 112, and no claim of the '105, '263, '918, '195,  
8 '592, '152, '120, '020, '916, and '863 Patents can be validly construed to cover any Samsung  
9 device, system or operating method related to DRAM memory.

10 **RESPONSE TO PARAGRAPH NO. 54:**

11 Rambus denies the allegations contained in paragraph no. 54.

12 **Fourth Affirmative Defense – Prosecution Laches**

13 **PARAGRAPH NO. 55:**

14 Rambus's claims for relief and prayer for damages in the Complaint are barred, in whole  
15 or in part, because the equitable doctrine of prosecution laches renders the '105, '263, '918, '195,  
16 '592, '152, '120, '020, '916, and '863 Patents unenforceable.

17 **RESPONSE TO PARAGRAPH NO. 55:**

18 Rambus denies the allegations contained in paragraph no. 55.

19 **Fifth Affirmative Defense – Unclean Hands**

20 **PARAGRAPH NO. 56:**

21 Rambus's claims for relief and prayer for damages in the Complaint are barred, in whole  
22 or in part, because the equitable doctrine of unclean hands renders the '105, '263, '918, '195,  
23 '592, '152, '120, '020, '916, and '863 Patents unenforceable.

24 **RESPONSE TO PARAGRAPH NO. 56:**

25 Rambus denies the allegations contained in paragraph no. 56.

26 **Sixth Affirmative Defense – Equitable Estoppel**

27 **PARAGRAPH NO. 57:**

28 Rambus's claims for relief and prayer for damages in the Complaint are barred, in whole

1 or in part, because the doctrine of equitable estoppel renders the '105, '263, '918, '195, '592,  
2 '152, '120, '020, '916, and '863 Patents unenforceable.

3 **RESPONSE TO PARAGRAPH NO. 57:**

4 Rambus denies the allegations contained in paragraph no. 57.

5 **Seventh Affirmative Defense - Estoppel**

6 **PARAGRAPH NO. 58:**

7 Rambus is estopped by its conduct during the course of its membership in JEDEC from  
8 asserting, amongst others, any of the patents that originate from the 1990 Farmwald '898  
9 application or the October, 1995 Ware '294 application, including but not limited to the '105,  
10 '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents against Samsung's SDRAM  
11 products, the facts and circumstances of which are set forth herein.

12 **RESPONSE TO PARAGRAPH NO. 58:**

13 Rambus denies the allegations contained in paragraph no. 58.

14 **PARAGRAPH NO. 59:**

15 JEDEC with its associated committees is and, at all time relevant herein, has been the  
16 engineering standardization body for solid-state products in the United States and is part of the  
17 larger Electronic Industries Alliance ("EIA"). JEDEC has 300 member companies and 1800  
18 individual committee participants. Standards promulgated by JEDEC, particularly for memories,  
19 are the predominant standards world-wide.

20 **RESPONSE TO PARAGRAPH NO. 59:**

21 Rambus admits that in 1991 and throughout the time that Rambus attended JEDEC  
22 meetings, JEDEC was an activity within the EIA engineering department that published standards  
23 for certain semiconductor devices. Except as expressly admitted, Rambus denies the allegations  
24 of paragraph no. 59.

25 **PARAGRAPH NO. 60:**

26 At all times relevant herein, the semiconductor industry relied on JEDEC to develop the  
27 memory interface standard(s) for DRAMs and other memories, which are used predominantly in  
28 successive generations of computers, including mainframe, workstation, desktop, and laptop

1 computers as well as many other electronic devices. JEDEC operated and continues to operate  
2 through committees populated by industry representatives with a background in the engineering  
3 and marketing requirements of the industry. In choosing standards, proposals for inclusion in or  
4 changes to existing standards or standards under consideration would be made at JEDEC  
5 meetings by its members. In the intervals between meetings, members would invest time and  
6 resources evaluating these proposals for suitability. Over a series of meetings, input from  
7 industry participants would be considered. Gradually, a consensus would tend to emerge on the  
8 specific set of features that best suited the then-current requirements of the market by cost and  
9 performance measures. JEDEC was always pushed to move the standard ahead at the pace  
10 desired by the market, and to promulgate new and evolving standards in advance of their actual  
11 need in the market.

12 **RESPONSE TO PARAGRAPH NO. 60:**

13 Rambus denies the allegations of paragraph no. 60.

14 **PARAGRAPH NO. 61:**

15 JEDEC has rules and procedures designed to guarantee that JEDEC (and its rules) is not  
16 used by its members for anticompetitive or illegal purposes. One specific kind of anticompetitive  
17 effect that JEDEC guards against its unintended inclusion in a JEDEC standard of patented  
18 elements or requirements. JEDEC does not prohibit standards that require the use of patented  
19 technology, but JEDEC does require that any decision to incorporate a patented element in a  
20 JEDEC standard be made with knowledge and full disclosure of the fact that a proposed standard  
21 includes or requires patented technology and any consequently required patent licenses that  
22 would be needed to implement the standard. JEDEC's policy is neutral on incorporation of  
23 patented elements in a standard so long as: (a) the standard setting committee has a full and fair  
24 opportunity to evaluate the existence of the patent or possible patent, and (b) the purported owner  
25 of the patent or possible patent is willing to license the patent royalty free or on reasonable and  
26 non-discriminatory terms.

27 **RESPONSE TO PARAGRAPH NO. 61:**

28 Rambus denies the allegations of paragraph no. 61.

1 **PARAGRAPH NO. 62:**

2 Recognizing that no written rule can be so clear and precise that someone cannot find a  
3 way to evade or subvert its intent, JEDEC's procedure relied on the good faith participation of its  
4 members.

5 **RESPONSE TO PARAGRAPH NO. 62:**

6 Rambus denies the allegations of paragraph no. 87.

7 **PARAGRAPH NO. 63:**

8 In 1992, Rambus joined JEDEC. Rambus became interested in joining JEDEC for two  
9 reasons. First, it provided Rambus with insight into the industry's efforts to develop a state-of-  
10 the-art open DRAM memory interface standard. Second, it presented Rambus with an  
11 opportunity to meet prospective customers and pitch RDRAM license agreements to those  
12 customers.

13 **RESPONSE TO PARAGRAPH NO. 63:**

14 Rambus admits that in late 1991 or early 1992, it paid the fees necessary to allow it to  
15 attend certain committee meetings held by JEDEC. Except as expressly admitted, Rambus denies  
16 the allegations contained in paragraph no. 63.

17 **PARAGRAPH NO. 64:**

18 Rambus joined JEDEC at the time when many JEDEC members were advocating the  
19 adoption of a synchronous memory interface for DRAMs in place of the then-dominant  
20 asynchronous (or "conventional") DRAM interface. JEDEC's work on synchronous DRAM  
21 interface technology was independent of any work by Rambus in this area.

22 **RESPONSE TO PARAGRAPH NO. 64:**

23 Rambus is without knowledge or information sufficient to form a belief as to the truth of  
24 the allegations in paragraph no. 64, and, on that basis, denies the same. Rambus denies the  
25 allegations of paragraph no. 64.

26 **PARAGRAPH NO. 65:**

27 The first SDRAM standard was adopted in JEDEC in 1993.  
28



1 **RESPONSE TO PARAGRAPH NO. 65:**

2 Rambus admits the allegations contained in paragraph no. 65.

3 **PARAGRAPH NO. 66:**

4 The current SDRAM products represent foreseeable extensions and improvements of the  
5 base SDRAM standard which were known to or anticipated by Rambus and other JEDEC  
6 members when the base SDRAM standard was adopted at JEDEC in 1993. Many of the features  
7 first required by the JEDEC DDR SRAM, DDR2 SDRAM, and/or GDDR3 SDRAM interface  
8 standards were first included or proposed for inclusion during JEDEC's consideration, while  
9 Rambus was a JEDEC member, of standards for SDRAM and for DRAMs that would follow  
10 SDRAMs in the market. Other features required by the JEDEC DDR SDRAM, DDR2 SDRAM,  
11 GDDR3, and/or related interface standards were originally included in and required by the  
12 JEDEC standards for SDRAM.

13 **RESPONSE TO PARAGRAPH NO. 66:**

14 Rambus denies the allegations of paragraph no. 66.

15 **PARAGRAPH NO. 67:**

16 As a result of its membership in JEDEC, Rambus agreed, both explicitly and implicitly,  
17 that it would abide by the rules governing JEDEC members. These rules, among other things,  
18 required JEDEC members, including Rambus, to disclose to other JEDEC members any patents,  
19 patent applications or intentions to file patents that might bear upon standards being considered  
20 by JEDEC committees.

21 **RESPONSE TO PARAGRAPH NO. 67:**

22 Rambus denies the allegations of paragraph no. 67.

23 **PARAGRAPH NO. 68:**

24 By participating as a JEDEC member, Rambus knew or should have known that Samsung  
25 would be reasonably induced to rely upon Rambus's promises and representations that it would  
26 disclose any patents, patent applications, or intentions to file patents that may bear upon standards  
27 being considered by JEDEC.  
28

**RESPONSE TO PARAGRAPH NO. 68:**

Rambus denies the allegations of paragraph no. 68.

**PARAGRAPH NO. 69:**

Samsung reasonably relied upon Rambus's promises and representations and was induced to design many of its products in accordance with standards adopted by JEDEC.

**RESPONSE TO PARAGRAPH NO. 69:**

Rambus denies the allegations of paragraph no. 69.

**PARAGRAPH NO. 70:**

Rambus's infringement allegations arise, at least in part, as a result of Samsung implementing one or more SDRAM standards adopted by JEDEC, through the design, manufacture, and sale of memory products complying with the JEDEC standards for, among others, SDRAM components and/or modules. Samsung memory products complying with JEDEC standards are sometimes referred to herein as "JEDEC standard products."

**RESPONSE TO PARAGRAPH NO. 70:**

Rambus is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph no. 70, and, on that basis, denies the same. Rambus denies the allegations of paragraph no. 70.

**PARAGRAPH NO. 71:**

Samsung is informed and believes that Rambus never disclosed to other JEDEC committee members its intention to file any of the patents, or claims of the type or scope contained in patents that originated with the 1990 Farmwald '898 application, and/or the 1995 Ware '294 application, including, but not limited to the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents asserted herein against Samsung's SDRAM products or other products, thereby breaching its duties of disclosure and good faith toward JEDEC and the members of JEDEC and, specifically, Samsung.

**RESPONSE TO PARAGRAPH NO. 71:**

Rambus denies the allegations of paragraph no. 71.

1 **PARAGRAPH NO. 72:**

2 Through a series of licenses that began in 1994 and other ties that included Samsung's  
3 active promotion of Rambus technology and marketing of Rambus products at substantial  
4 expense to Samsung,<sup>1</sup> Rambus and Samsung formed a valuable business alliance in which  
5 Samsung supplied products based on Rambus technologies to the marketplace. During one of the  
6 numerous "partner meetings" that executives of Samsung and Rambus attended together to  
7 discuss, among other things, the status of their joint plans for Samsung's manufacture, sale, and  
8 advertising of RDRAMs, Dave Mooring, president of Rambus at the time, stated that "Samsung  
9 continues to be a very strong and valuable partner for Rambus." Rambus encouraged Samsung to  
10 develop products based on Rambus's patents. As a result, Samsung became the largest maker and  
11 supplier of Rambus products.<sup>2</sup> The valuable business alliance between Rambus and Samsung  
12 allowed Rambus to market its company and products based on Rambus technology that could not  
13 otherwise have been done successfully without Samsung's assistance.

14 **RESPONSE TO PARAGRAPH NO. 72:**

15 Rambus admits that it entered into a license agreement with Samsung in 1994. Rambus  
16 further admits that it believed that business relationship would be valuable. Rambus further  
17 admits that Samsung was and is a large maker and supplier of Rambus products and that Samsung  
18 has paid and continues to pay Rambus royalties for the use of its patented technologies in certain  
19 products including RDRAM and XDR. Rambus is without knowledge or information sufficient  
20 to form a belief as to the truth of the allegations in footnote 1 with respect to how much Samsung  
21 has spent on Rambus-related research, development, advertising, and marketing, and, on that  
22 basis, denies the same. Rambus is also without knowledge or information sufficient to form a  
23 belief as to the truth of the allegation that Samsung has sold \$3.2 billion worth of Rambus DRAM  
24 products to customers, and, on that basis, denies the same. Rambus is also without knowledge or

25 \_\_\_\_\_  
26 <sup>1</sup> Samsung has spent over \$200,000,000 on Rambus-related research, development, advertising,  
27 and marketing. Meanwhile, Samsung has sold \$3.2 billion worth of Rambus DRAM products to  
28 customers such as Sony for use in its Playstations, and has paid Rambus royalties of \$39.8 million  
for use of Rambus DRAM technology.

<sup>2</sup> From 1995 until 2005, Samsung was the largest maker and seller of Rambus DRAM.

1 information sufficient to form a belief as to the truth of the allegations about what Dave Mooring  
2 may have said at a meeting with Samsung, and, on that basis, denies the same. Except as  
3 otherwise expressly admitted, Rambus denies the allegations of paragraph no. 72.

4 **PARAGRAPH NO. 73:**

5 Given the extensive and friendly business relationship outlined above, Samsung  
6 reasonably relied on Rambus's assertions that Samsung was a valued business partner and was  
7 dealing with Samsung in good faith and with the intent to promote the valuable business alliance  
8 between them. As a result, Samsung was misled by Rambus into promoting Rambus technology  
9 in faithful adherence to the business alliance. Samsung was further misled into believing that  
10 Rambus was dealing with Samsung honestly, in good faith, and was not secretly taking actions  
11 that would harm Samsung's business. Moreover, each of the several contracts carried with them  
12 duties of good faith and fair dealing that further led Samsung to believe that its business ally,  
13 Rambus, would not secretly work against Samsung's interests.

14 **RESPONSE TO PARAGRAPH NO. 73:**

15 Rambus denies the allegations of paragraph no. 73.

16 **PARAGRAPH NO. 74:**

17 As a direct and proximate result of Rambus's failure to perform its duties and Rambus's  
18 misrepresentations, Samsung has been damaged in that it has been required to pursue its legal  
19 remedies, including this suit, at great expense. Moreover, if Rambus is allowed to assert its  
20 patents in breach of its duties of disclosure and good faith to Samsung and other JEDEC  
21 members, and is successful, Samsung will be damaged in the amount sought by Rambus as  
22 license fees, which, as yet, is unknown.

23 **RESPONSE TO PARAGRAPH NO. 74:**

24 Rambus denies the allegations of paragraph no. 74.

25 **Eighth Affirmative Defense – Implied License**

26 **PARAGRAPH NO. 75:**

27 Because of its conduct during the course of its membership in JEDEC as outlined herein,  
28 Rambus's claims of infringement of any of the patents that originate from the 1990 Farmwald

1 '898 application or the October, 1995 Ware '294 application, including but not limited to the  
2 '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents against Samsung's SDRAM  
3 products, are barred by the doctrine of implied license.

4 **RESPONSE TO PARAGRAPH NO. 75:**

5 Rambus denies the allegations of paragraph no. 75.

6 **PARAGRAPH NO. 76:**

7 Because of its conduct in JEDEC and/or during the course of its business alliance with  
8 Samsung as outlined herein, Rambus's claims of infringement of any of the patents that originate  
9 from the 1990 Farmwald '898 application or the October, 1995 Ware '294 application, including  
10 but not limited to the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents  
11 against Samsung's SDRAM products, are barred by the doctrine of implied license.

12 **RESPONSE TO PARAGRAPH NO. 76:**

13 Rambus denies the allegations of paragraph no. 76.

14 **Ninth Affirmative Defense – Marking and Limitations**

15 **PARAGRAPH NO. 77:**

16 Rambus's claims for relief and prayer for damages are barred, in whole or in part, by 35  
17 U.S.C. §§ 286 and 287.

18 **RESPONSE TO PARAGRAPH NO. 77:**

19 Rambus denies the allegations of paragraph no. 77.

20 **SECOND AMENDED COUNTERCLAIMS**

21 **PARAGRAPH NO. 78:**

22 Samsung Electronics Co., Ltd. ("SEC") is a corporation organized and existing under the  
23 laws of Korea, with a principal place of business at 250, 2-Ka, Taepyung-Ro, Chung-Ku, Seoul,  
24 South Korea, 100-742. Samsung Electronics America, Inc. ("SEA") is a corporation organized  
25 and existing under the laws of New Jersey, with a principal place of business at 105 Challenger  
26 Road, Ridgefield Park, New Jersey, 07660.

27 **RESPONSE TO PARAGRAPH NO. 78:**

28 Rambus is without knowledge or information sufficient to form a belief as to the truth of

1 the allegations of paragraph no. 78, and on that basis denies the allegations contained therein.

2 **PARAGRAPH NO. 79:**

3 Rambus is a corporation incorporated and existing under the laws of Delaware. Rambus's  
4 principal place of business is at 4440 El Camino Real, Los Altos, California, 94022.

5 **RESPONSE TO PARAGRAPH NO. 79:**

6 Rambus admits that at the present time, it is a Delaware corporation with its principal  
7 place of business at 4440 El Camino Real, Los Altos, California, 94022.

8 **JURISDICTION AND VENUE**

9 **PARAGRAPH NO. 80:**

10 This Court has subject matter jurisdiction over SEC's and SEA's patent counterclaims,  
11 which arise under the patent laws of the United States pursuant to 28 U.S.C. §§ 1331, 1338, 2201,  
12 and 2202. This Court has subject matter jurisdiction over SEC's and SEA's state law claims  
13 pursuant to 28 U.S.C. §§ 1332 and 1337, as SEC is a foreign citizen, SEA is a citizen of the State  
14 of New Jersey, Rambus is a citizen of the States of California and Delaware, and the amount in  
15 controversy exceeds \$75,000; further, some or all of these claims fall within the Court's  
16 supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because some of these claims are so  
17 related to the patent claims that they form part of the same case or controversy.

18 **RESPONSE TO PARAGRAPH NO. 80:**

19 Rambus admits that the United States District Court for the Northern District of California  
20 has subject matter jurisdiction over this action. Rambus denies that this Court has supplemental  
21 jurisdiction over state law claims pursuant to 28 U.S. C. § 1367. Except as expressly admitted,  
22 Rambus denies the allegations contained in paragraph no. 80.

23 **PARAGRAPH NO. 81:**

24 This Court has personal jurisdiction over Rambus at least because Rambus filed its claim  
25 for patent infringement in this Court, in response to which these counterclaims are filed.

26 **RESPONSE TO PARAGRAPH NO. 81:**

27 Rambus admits that this Court has personal jurisdiction over Rambus because Rambus is  
28 a resident of the State of California. Except as expressly admitted, Rambus denies the allegations

1 of paragraph no. 81.

2 **PARAGRAPH NO. 82:**

3 Venue is established in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.  
4 Venue is additionally proper in this Court because Rambus has consented to the propriety of  
5 venue in this Court by filing its claims for patent infringement in this Court, in response to which  
6 these counterclaims are filed. Further, Rambus is a resident of the State of California and is  
7 generally present here.

8 **RESPONSE TO PARAGRAPH NO. 82:**

9 Rambus admits that venue is proper in this judicial district.

10 **GENERAL ALLEGATIONS**

11 **PARAGRAPH NO. 83:**

12 On or about October 31, 2000, SEC and Rambus entered into an agreement entitled  
13 “SDR/DDR IC and SDR/DDR Memory Module Patent License Agreement Between Rambus Inc.  
14 and Samsung Electronics Co., Ltd.” (the “SDR/DDR License”).

15 **RESPONSE TO PARAGRAPH NO. 83:**

16 Rambus admits the allegations of paragraph no. 83.

17 **PARAGRAPH NO. 84:**

18 Rambus claims to be the owner by assignment of U.S. Patent No. 5,915,105 (the “’105  
19 Patent”), which is entitled “Integrated Circuit I/O Using A High Performance Bus Interface,” and  
20 which issued on June 22, 1999.

21 **RESPONSE TO PARAGRAPH NO. 84:**

22 Rambus admits the allegations contained in paragraph no. 84.

23 **PARAGRAPH NO. 85:**

24 Rambus claims to be the owner by assignment of U.S. Patent No. 5,953,263 (the “’263  
25 Patent”), which is entitled “Synchronous Memory Device Having A Programmable Register And  
26 Method of Controlling Same,” and which issued on September 14, 1999.

27 **RESPONSE TO PARAGRAPH NO. 85:**

28 Rambus admits the allegations contained in paragraph no. 85.

**PARAGRAPH NO. 86:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,034,918 (the “918 Patent”), which is entitled “Method of Operating A Memory Having A Variable Data Output Length And A Programmable Register,” and which issued on March 7, 2000.

**RESPONSE TO PARAGRAPH NO. 86:**

Rambus admits the allegations contained in paragraph no. 86.

**PARAGRAPH NO. 87:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,038,195 (the “195 Patent”), which is entitled “Synchronous Memory Device Having A Delay Time Register and Method of Operating Same,” and which issued on March 14, 2000.

**RESPONSE TO PARAGRAPH NO. 87:**

Rambus admits the allegations contained in paragraph no. 87.

**PARAGRAPH NO. 88:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,067,592 (the “592 Patent”), which is entitled “System Having A Synchronous Memory Device,” and which issued on May 23, 2000.

**RESPONSE TO PARAGRAPH NO. 88:**

Rambus admits the allegations contained in paragraph no. 88.

**PARAGRAPH NO. 89:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,101,152 (the “152 Patent”), which is entitled “Method Of Operating A Synchronous Memory Device,” and which issued on August 8, 2000.

**RESPONSE TO PARAGRAPH NO. 89:**

Rambus admits the allegations contained in paragraph no. 89.

**PARAGRAPH NO. 90:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,324,120 (the “120 Patent”), which is entitled “Memory Device Having A Variable Data Output Length,” and which issued on November 27, 2001.



**RESPONSE TO PARAGRAPH NO. 90:**

Rambus admits the allegations contained in paragraph no. 90.

**PARAGRAPH NO. 91:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,378,020 (the “’020 Patent”), which is entitled “System Having Double Data Transfer Rate And Intergrated [sic] Circuit Therefor,” and which issued on April 23, 2002.

**RESPONSE TO PARAGRAPH NO. 91:**

Rambus admits the allegations contained in paragraph no. 91.

**PARAGRAPH NO. 92:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,426,916 (the “’916 Patent”), which is entitled “Memory Device Having A Variable Data Output Length And A Programmable Register,” and which issued on July 30, 2002.

**RESPONSE TO PARAGRAPH NO. 92:**

Rambus admits the allegations contained in paragraph no. 92.

**PARAGRAPH NO. 93:**

Rambus claims to be the owner by assignment of U.S. Patent No. 6,452,863 (the “’863 Patent”), which is entitled “Method Of Operating A Memory Device Having A Variable Data Input Length,” and which issued on September 17, 2002.

**RESPONSE TO PARAGRAPH NO. 93:**

Rambus admits the allegations contained in paragraph no. 93.

**PARAGRAPH NO. 94:**

Samsung and Rambus executed the first license between them, which granted Samsung a license to use Rambus’s RDRAM technology, in November of 1994. This marked the beginning of what would be, at least until the litigation between them began, an extensive and cooperative business relationship. After two years of close cooperation on marketing and engineering to develop, market, and sell Samsung’s RDRAM, the parties negotiated a First Addendum to the RDRAM license in February of 1997. Samsung continued for the next three-and-a-half years to promote and manufacture Rambus’s product, and in July 2000 the parties negotiated a Second

1 Addendum to the RDRAM license. Samsung is still licensed to use RDRAM technology and  
2 continues to manufacture and sell RDRAMs today.

3 **RESPONSE TO PARAGRAPH NO. 94:**

4 Rambus admits that Samsung and Rambus executed a license in November 1994 which  
5 granted Samsung a license to use Rambus's RDRAM technology. Rambus admits that Samsung  
6 and Rambus negotiated a First Addendum to the RDRAM license that was entered in February  
7 1997. Rambus admits that in July 2000, Samsung and Rambus entered into a Second Addendum  
8 to the RDRAM license. Rambus admits that Samsung is still licensed to use RDRAM technology  
9 and continues to manufacture and sell RDRAM technology. Except as expressly admitted,  
10 Rambus denies the allegations of paragraph no. 94.

11 **PARAGRAPH NO. 95:**

12 Samsung and Rambus executed the SDR/DDR License to Rambus's patents that allegedly  
13 cover, among other things, specific aspects of SDRAM and DDR DRAM technologies, in  
14 October 2000. This was the first time that the parties' relationship involved mainstream memory  
15 technologies, rather than just RDRAM. The SDR/DDR License required Rambus to notify  
16 Samsung if another, later license included a lower effective royalty rate; and, further to adjust  
17 Samsung's rate to the lower effective rate. (Section 3.8). Further, the SDR/DDR License also  
18 required good faith negotiation of a renewal. (Section 8.5). Finally, there is a duty of good faith  
19 and fair dealing in the SDR/DDR License.

20 **RESPONSE TO PARAGRAPH NO. 95:**

21 In October 2000, Samsung and Rambus entered into the "SDR/DDR IC and SDR/DDR  
22 Memory Module Patent License Agreement Between Rambus Inc. and Samsung Electronics Co.,  
23 Ltd.." Rambus admits that Section 3.8 provided: "If at any time during this Agreement, the  
24 royalty rate agreed to be paid or ordered to be paid by a Third Party, whether by settlement or by  
25 court or agency order, for products corresponding to SDR SDRAM, SDR SGRAM, DDR  
26 SDRAM, or DDR SGRAM is lower than that specified in Section 3.1(b) of this Agreement,  
27 Rambus shall notify Samsung, in writing, within ten (10) days of the effective date of such lower  
28 royalty rate and such lower royalty rate shall be effective for this Agreement the first day of the

1 royalty reporting period in which written notice by Rambus is made. If the lower royalty rate is  
2 limited geographically due to a court or agency order, then Samsung's lower royalty rate shall be  
3 similarly limited to sales in the same geographic area. Should, by agreement, subsequent order,  
4 or amendment, modification, or reversal of the court or agency order (whether on appeal or  
5 otherwise), the lower royalty rate of any litigant change, then the royalty rate for Samsung shall  
6 change correspondingly, but not to exceed the rates specified in Section 3.1(b)." Rambus further  
7 admits that Section 8.5 provided: "Assuming that this Agreement has not been terminated and  
8 that Samsung is not in breach hereof, the parties shall meet, six (6) months before the expiration  
9 of this Agreement, to negotiate in good faith with a view to achieving a mutually satisfactory  
10 patent license agreement under the Rambus Patents with respect to the Licensed Products,  
11 including, without limitation, an extension hereof or a new agreement." Except as expressly  
12 admitted, Rambus denies the allegations of paragraph no. 95.

13 **PARAGRAPH NO. 96:**

14 The SDR/DDR License to Rambus's patents, executed between Samsung and Rambus,  
15 was just the most recent in a series of agreements that evidenced what Samsung believed to be a  
16 valuable business alliance between Samsung and Rambus in which both parties shared common  
17 business objectives.

18 **RESPONSE TO PARAGRAPH NO. 96:**

19 Rambus is without knowledge or information sufficient to form a belief as to the truth of  
20 the allegations in paragraph no. 96 about Samsung's belief, and, on that basis, denies the same.  
21 Rambus denies the allegations of paragraph no. 96.

22 **PARAGRAPH NO. 97:**

23 Samsung's belief in Rambus's intentions towards Samsung to maintain a profitable  
24 business alliance was further bolstered by Rambus's assertions during their numerous "partner  
25 meetings" that Samsung was a valued business partner and was dealing with Samsung in good  
26 faith and with the intent to promote the valuable business alliance between them. Samsung was  
27 further and justifiably misled into believing that Rambus was dealing with Samsung honestly, in  
28 good faith, and was not secretly taking actions that would harm Samsung's business.

**RESPONSE TO PARAGRAPH NO. 97:**

Rambus is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph no. 97 about Samsung's belief, and, on that basis, denies the same. Rambus denies the allegations of paragraph no. 97.

**PARAGRAPH NO. 98:**

Samsung, on the basis of its justified understanding that Rambus and Samsung were valuable business partners in a profitable business alliance, did not suspect and could not have expected Rambus to behave in a way that would jeopardize that relationship nor that its business ally, Rambus, would secretly work against Samsung's interests.

**RESPONSE TO PARAGRAPH NO. 98:**

Rambus denies the allegations of paragraph no. 98.

**Rambus's Aiding and Abetting Neil Steinberg's  
Breach of Fiduciary Duties Owed to Samsung, a Current Client**

**PARAGRAPH NO. 99:**

Mr. Neil Steinberg began work for Samsung as an in-house attorney on or about November 16, 1994. He remained at Samsung as in-house counsel until on or about August 7, 1998. At all relevant times during his employment by Samsung, Mr. Steinberg had an employment agreement with Samsung. The First Employment Agreement, dated November 16, 1994, was effective until November 16, 1996. A Second Employment Agreement was effective from November 16, 1996, until Mr. Steinberg resigned from Samsung in August 1998. Both agreements contained a provision prohibiting Mr. Steinberg from engaging in any alternative employment during the term of the agreement without prior written consent from Samsung.<sup>3</sup>

**RESPONSE TO PARAGRAPH NO. 99:**

Rambus is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph no. 99, and, on that basis, denies the same. Rambus denies the allegations of paragraph no. 99.

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<sup>3</sup> A copy of Mr. Steinberg's Second Employment Agreement is attached as Exhibit A.

1     **PARAGRAPH NO. 100:**

2           Upon information and belief, by February of 1998, Rambus had secretly engaged Mr.  
3     Steinberg to actively work for it as an outside attorney, providing legal advice and strategies for  
4     the enforcement of legal claims, including patent claims against DRAM manufacturers, such as  
5     Samsung, notwithstanding the fact that Rambus knew Mr. Steinberg was employed as a full-time,  
6     in-house counsel for Samsung.

7     **RESPONSE TO PARAGRAPH NO. 100:**

8           Rambus denies the allegations of paragraph no. 100.

9     **PARAGRAPH NO. 101:**

10          As an in-house attorney for Samsung, Mr. Steinberg owed Samsung a fiduciary duty of  
11     utmost good faith and fair dealing and undivided loyalty and honesty in fact.

12     **RESPONSE TO PARAGRAPH NO. 101:**

13          The allegations in paragraph no. 101 constitute conclusions of law and therefore do not  
14     require a response. To the extent the allegations are deemed to constitute allegations of fact,  
15     Rambus denies the allegations of paragraph no. 101.

16     **PARAGRAPH NO. 102:**

17          Upon information and belief, at the request of Rambus, Mr. Steinberg actively worked to  
18     help Rambus, both as its outside and in-house counsel, to plan patent prosecution strategies,  
19     including actually working on patent applications, patent enforcement strategies, document  
20     handling and retention strategies for use in litigation, and to take other measures to extract  
21     royalties from manufacturers of DRAMs, including Samsung. Further, upon information and  
22     belief, Mr. Steinberg used information about Samsung's business and DRAM products in  
23     working for Rambus while he was under contractual and fiduciary duties not to disclose such  
24     information about Samsung's business or to use it contrary to Samsung's interests, regardless of  
25     whether such information was trade secret.

26     **RESPONSE TO PARAGRAPH NO. 102:**

27          Rambus admits that Neil Steinberg worked as both in-house and outside counsel on  
28     intellectual property matters, including licensing and patent prosecution. Except as expressly

1 admitted, Rambus denies the allegations of paragraph no. 102.

2 **PARAGRAPH NO. 103:**

3 More specifically, upon information and belief, Rambus's efforts to extract royalties from  
4 Samsung for its SDR and DDR SDRAM sales began in 1997, when Rambus hired Mr. Joel Karp,  
5 a senior managing director at Samsung who negotiated, among other licenses, the RDRAM  
6 license with Rambus on behalf of Samsung. Because Samsung was not privy to Rambus's patent  
7 acquisition and enforcement strategies and had no way to know that Rambus was planning to  
8 target Samsung's products, it had no reason to be alarmed when Rambus, its strategic business  
9 partner, hired Mr. Karp to be its Vice President of Intellectual Property. Also unknown to  
10 Samsung at the time was the fact that, after Mr. Karp left Samsung, he stayed in touch with an in-  
11 house Samsung attorney, Neil Steinberg. Indeed, while he was still at Samsung (and Mr. Karp  
12 was at Rambus), Mr. Steinberg spoke with Mr. Karp on the phone three to four times a week,  
13 oftentimes about Samsung matters. Such frequent conversations could not be explained as  
14 merely friendly chats, given that Samsung's subsequent internal investigation has confirmed that  
15 Mr. Karp and Mr. Steinberg were not close social friends and infrequently socialized during their  
16 mutual employment at Samsung.

17 **RESPONSE TO PARAGRAPH NO. 103:**

18 Rambus admits that while Mr. Steinberg was working for Samsung, Joel Karp and Mr.  
19 Steinberg spoke on the telephone. Rambus further admits that it hired Joel Karp in 1997. Except  
20 as expressly admitted, Rambus denies the allegations of paragraph no. 103.

21 **PARAGRAPH NO. 104:**

22 Upon information and belief, due to Mr. Steinberg's role as Samsung's trusted in-house  
23 counsel, Mr. Steinberg was privy to extensive Samsung confidential and proprietary information  
24 that he discussed with Mr. Karp while still employed by Samsung. In particular, during his  
25 employment with Samsung, Mr. Steinberg primarily worked on Samsung patents relating to  
26 DRAM technology and was also involved in litigation regarding patents being asserted against  
27 Samsung. Mr. Steinberg, therefore, was privy to confidential and sensitive information about  
28 DRAM products, including SDRAM and DDR SDRAM, that were still in development at

1 Samsung, as well as confidential information about inventions and innovations that Samsung  
2 included in its DRAM products. For example, Mr. Steinberg helped draft patent claims during  
3 prosecution of a patent application that issued as U.S. Patent No. 5,835,956 (the “’956 Patent”).  
4 The ’956 Patent relates to DRAM technology and is asserted as prior art to the patents-in-suit in  
5 co-pending patent litigation. In fact, Mr. Steinberg prosecuted at least eight Samsung DRAM  
6 patents, including U.S. Patent Nos. 6,438,083, 6,343,036, 6,279,116, 5,838,990, 5,835,956,  
7 5,703,828, 5,631,871, and 559,008.

8 **RESPONSE TO PARAGRAPH NO. 104:**

9 Rambus is without knowledge or information sufficient to form a belief as to the truth of  
10 the allegations in paragraph no. 104, and, on that basis, denies the same. Rambus denies the  
11 allegations of paragraph no. 104.

12 **PARAGRAPH NO. 105:**

13 Mr. Steinberg was also made aware of Samsung’s then-future development plans for  
14 DRAM products through his use of product roadmaps in discovery in litigation and in patent  
15 licensing endeavors. In addition, Mr. Steinberg was intimately familiar with Samsung’s  
16 proprietary patent prosecution and licensing strategies, which he implemented while employed as  
17 Samsung’s in-house counsel. Further, Mr. Steinberg had worked with Samsung employees on a  
18 strategy to draft patent claims to protect Samsung’s specific implementation of JEDEC standard  
19 features of SDRAM and DDR SDRAM Technology, and was intimately familiar with how  
20 Samsung’s implementation of JEDEC features was done in its products and how Samsung  
21 planned to protect those features. The ’956 patent was work product as part of this effort to  
22 protect Samsung’s implementation of its JEDEC-compliant products and features.

23 **RESPONSE TO PARAGRAPH NO. 105:**

24 Rambus is without knowledge or information sufficient to form a belief as to the truth of  
25 the allegations in paragraph no. 105, and, on that basis, denies the same. Rambus denies the  
26 allegations of paragraph no. 105.

27 **PARAGRAPH NO. 106:**

28 Armed with this wealth of knowledge, Mr. Steinberg was speaking to Mr. Karp at Rambus

1 about Samsung matters three to four times a week, including such times when he was working on  
2 patent protection for Samsung's implementation of JEDEC standards, such as the '956 patent  
3 application and other projects. Upon information and belief, because Mr. Karp's job at Rambus  
4 was to implement a patent-enforcement strategy against DRAM manufacturers, including  
5 Samsung, Mr. Karp was particularly interested in learning proprietary information from Mr.  
6 Steinberg about Samsung's DRAM products and product plans. Samsung did not even know  
7 about these communications at the time, and certainly not of their content. Upon information and  
8 belief, however, the matters discussed between Mr. Steinberg and Mr. Karp during those secret  
9 conversations included the projects that Mr. Steinberg was working on while at Samsung from  
10 late 1997 to August 1998, as well as proprietary information relating to Samsung's DRAM  
11 products and technology and related inventions and innovations, future products, legal strategies,  
12 and Samsung patent prosecution and licensing strategies.

13 **RESPONSE TO PARAGRAPH NO. 106:**

14 Rambus admits that while Mr. Steinberg was working for Samsung, Joel Karp and Mr.  
15 Steinberg spoke on the telephone. Rambus is without knowledge or information sufficient to  
16 form a belief as to the truth of the allegations in paragraph no. 106 about whether Samsung knew  
17 the extent that Mr. Steinberg and Mr. Karp spoke by telephone, and, on that basis, denies the  
18 same. Except as expressly admitted, Rambus denies the allegations of paragraph no. 106.

19 **PARAGRAPH NO. 107:**

20 It is particularly notable that, at this same time, Mr. Karp was secretly meeting with  
21 outside counsel for Rambus to plan suits against Samsung and others. Indeed, contemporaneous  
22 internal Rambus documents, revealed for the first time during the *Infineon* unclean-hands trial in  
23 2005, state that Rambus was making itself "battle ready" for litigation, and was pursuing patent  
24 coverage that would include features of non-Rambus DRAMs. This "strategic licensing and  
25 litigation" strategy was being planned by Mr. Karp and presented to the Rambus Board of  
26 directors at the same time that Mr. Karp was speaking with Mr. Steinberg three to four times a  
27 week about Samsung matters. Documents revealed for the first time during the *Infineon* 2005  
28 trial showed that during the winter and spring of 1998, Rambus had under Mr. Karp's supervision



1 reverse engineered Samsung products to analyze them for infringement lawsuits.

2 **RESPONSE TO PARAGRAPH NO. 107:**

3 Rambus denies the allegations of paragraph no. 107.

4 **PARAGRAPH NO. 108:**

5 After Mr. Steinberg officially resigned from Samsung in August 1998, he continued  
6 working for Rambus as outside counsel, eventually joining Rambus full-time as in-house counsel.  
7 Although Mr. Steinberg was no longer employed as in-house counsel for Samsung, he still owed  
8 continuing duties to safeguard Samsung's confidential and proprietary information. These duties  
9 arose from Mr. Steinberg's employment contract, which imposed continuing duties of  
10 confidentiality, as well as from Mr. Steinberg's ethical obligations owed to Samsung as a former  
11 client. Upon information and belief, Mr. Steinberg violated these duties by continuing to disclose  
12 and use Samsung proprietary information in his work for Rambus. In particular, upon  
13 information and belief, Mr. Steinberg continued to make disclosure and use of Samsung  
14 information when he was an outside attorney for Rambus and prosecuting Rambus patents  
15 relating to SDRAM and DDR SDRAM technology. Further, upon information and belief, Mr.  
16 Steinberg also disclosed and used Samsung information as in-house counsel for Rambus, where  
17 he reported to Mr. Karp and was handling patent prosecution, licensing, and litigation matters  
18 relating to SDRAM and DDR SDRAM technologies.

19 **RESPONSE TO PARAGRAPH NO. 108:**

20 Rambus admits that in August 1998, Mr. Steinberg worked for Rambus as outside counsel  
21 and later joined Rambus full-time as in-house counsel. Rambus is without knowledge or  
22 information sufficient to form a belief as to the truth of the allegations in paragraph no. 108 about  
23 Mr. Steinberg's employment contract, if such a contract exists, and, on that basis, denies the  
24 same. Except as expressly admitted, Rambus denies the allegations of paragraph no. 108.

25 **PARAGRAPH NO. 109:**

26 Rambus's change in its patent posture is evidence of Mr. Steinberg's revelations of  
27 Samsung confidential information to Rambus. Before Mr. Steinberg was requested to breach his  
28 fiduciary and contractual duties to Samsung and disclose Samsung information to Mr. Karp and

1 Rambus in 1997 and 1998, Rambus's patent claims were focused on Rambus's own proprietary  
2 RDRAM technology. Up until that time, moreover, Rambus's patent portfolio was not asserted  
3 against features of DRAMs made by Samsung. As a result of Mr. Steinberg's disclosures to  
4 Rambus, however, Rambus was able to draft new patent claims that Rambus now alleges are  
5 infringed by Samsung DRAM products. In fact, Mr. Steinberg has testified that he was the one  
6 who came up with the idea for Rambus's Strategic Patent Portfolio Project, which was designed  
7 to obtain patents that could be used as a part of a licensing and enforcement strategy against  
8 DRAM manufacturers, including Samsung. In undertaking the Strategic Patent Portfolio Project,  
9 Mr. Steinberg aggressively pursued patent applications to cover DRAM technology. As a part of  
10 this Project, Rambus continued to reverse engineer Samsung products.

11 **RESPONSE TO PARAGRAPH NO. 109:**

12 Rambus admits that Neil Steinberg worked as both in-house and outside counsel on  
13 intellectual property matters, including licensing and patent prosecution. Except as expressly  
14 admitted, Rambus denies the allegations of paragraph no. 109.

15 **PARAGRAPH NO. 110:**

16 Rambus was aware that Mr. Steinberg was still employed as an attorney by Samsung  
17 when Rambus engaged his services. Rambus was further aware of the fiduciary capacity in  
18 which Mr. Steinberg worked for Samsung, and of the duties that Mr. Steinberg owed to Samsung.  
19 Mr. Steinberg's duties to Samsung included an obligation to disclose violations of those duties.

20 **RESPONSE TO PARAGRAPH NO. 110:**

21 Rambus denies the allegations of paragraph no. 110.

22 **PARAGRAPH NO. 111:**

23 Mr. Steinberg remained silent and concealed from Samsung his work for Rambus in  
24 contravention of his on-going obligations with Samsung, including information about his dual  
25 employment with Samsung and Rambus. Rambus likewise mislead Samsung as to its true  
26 intentions regarding their strategic alliance, allowing Samsung to invest heavily in manufacturing,  
27 marketing, and otherwise promoting their joint projects in RDRAM while secretly reverse  
28 engineering Samsung parts for infringement lawsuits, making itself "battle ready" for a suit

1 against Samsung, and secretly consulting with Mr. Steinberg against Samsung's interests.

2 **RESPONSE TO PARAGRAPH NO. 111:**

3 Rambus denies the allegations of paragraph no. 111.

4 **PARAGRAPH NO. 112:**

5 Samsung justifiably relied on Mr. Steinberg faithfully fulfilling his duties owed to  
6 Samsung, including the obligation to disclose violations of those duties. Samsung further  
7 justifiably relied on Mr. Steinberg's silence as indication that he did not violate his duties.  
8 Samsung likewise relied upon the representations by Rambus that it was working with Samsung  
9 in a strategic alliance to their mutual benefit and Rambus's encouragement that Samsung continue  
10 to invest money and manpower in this strategic alliance.

11 **RESPONSE TO PARAGRAPH NO. 112:**

12 Rambus denies the allegations of paragraph no. 112.

13 **PARAGRAPH NO. 113:**

14 Rambus was aware of Mr. Steinberg's failure to disclose his dual employment to  
15 Samsung, in contravention of his duties to Samsung. Nevertheless, Rambus secretly engaged Mr.  
16 Steinberg's services when Rambus was aware that Mr. Steinberg was still employed as an  
17 attorney by Samsung and facilitated Mr. Steinberg's silence on his dual employment and, upon  
18 information and belief, his use of information about Samsung's business and DRAM products in  
19 working for Rambus. Rambus likewise kept its litigation planning against Samsung and its  
20 retention of Mr. Steinberg secret from Samsung.

21 **RESPONSE TO PARAGRAPH NO. 113:**

22 Rambus denies the allegations of paragraph no. 113.

23 **PARAGRAPH NO. 114:**

24 Rambus knew or should have known that hiring Mr. Steinberg while he was still  
25 employed by Samsung would be considered contrary to the purpose of maintaining a profitable  
26 business alliance between Rambus and Samsung. Nevertheless, Rambus concealed from  
27 Samsung that it had secretly engaged Mr. Steinberg's services when Rambus was aware that he  
28 was still employed as an attorney by Samsung and facilitated Mr. Steinberg's silence on his dual

1 employment and, upon information and belief, his use of information about Samsung's business  
2 and DRAM products in working for Rambus.

3 **RESPONSE TO PARAGRAPH NO. 114:**

4 Rambus denies the allegations of paragraph no. 114.

5 **PARAGRAPH NO. 115:**

6 Rambus, by its concealment, falsely represented to Samsung that it was still interested in  
7 faithfully remaining a business partner with Samsung in their profitable business alliance at a  
8 time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to  
9 Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony,  
10 and upon information and belief continues to sponsor false testimony, as well as destruction of  
11 documents, to conceal this wrongdoing, Rambus had a duty to speak.

12 **RESPONSE TO PARAGRAPH NO. 115:**

13 Rambus denies the allegations of paragraph no. 115.

14 **PARAGRAPH NO. 116:**

15 The existence of Mr. Steinberg's dual employment with Samsung and Rambus was  
16 publicly revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District  
17 Court for the Eastern District of Virginia in 2005, and could not have been discovered by  
18 Samsung before that time. Specifically, heavily redacted legal invoices from Mr. Steinberg to  
19 Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned from  
20 Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
21 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
22 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
23 1998. These documents and facts were not discoverable by Samsung or anyone else outside of  
24 Rambus before 2005, and would remain concealed today if Rambus had not included as entries  
25 on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.  
26 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had not  
27 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
28 Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and

1 abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional  
2 interference with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair  
3 business practices. Rambus and Mr. Steinberg have likewise testified in this Court that Mr.  
4 Steinberg's representation of Rambus while employed by Samsung was limited to a single  
5 unrelated project one weekend in early June 1998. However, documents produced by Rambus  
6 clearly imply this testimony is false as they show meetings and/or interactions between Rambus  
7 and Mr. Steinberg while Mr. Steinberg was employed by Samsung for business purposes at times  
8 other than this one weekend. Upon information and belief, this testimony presented by Rambus  
9 and Mr. Steinberg as recently as 2006 in this Court is part of a continuing fraud and deception to  
10 cover up Rambus's and Mr. Steinberg's wrongful acts.

11 **RESPONSE TO PARAGRAPH NO. 116:**

12 Rambus admits that Mr. Steinberg testified in a videotaped deposition, introduced in 2005  
13 at the unclean hands trial in *Rambus v. Infineon* in the Eastern District of Virginia, that he  
14 performed legal services for Rambus in June 1998. Rambus further admits that Rambus's  
15 30(b)(6) designee and Mr. Steinberg have testified that Mr. Steinberg's representation of Rambus  
16 prior to August 7, 1998 was 4.5 hours of work over one weekend on a project unrelated to the  
17 issues in this litigation. Rambus further admits that Mr. Steinberg testified in 2001 and April  
18 2004 that the first legal work he recalled doing for Rambus was on or about August 17, 1998.  
19 Rambus further admits that Mr. Steinberg signed a declaration on December 2, 2004 stating that  
20 after providing that earlier testimony, Mr. Steinberg had the opportunity to review certain  
21 documents that he had not seen prior to his earlier testimony and after his review of those  
22 documents, Mr. Steinberg then testified that he believed the first legal work that he performed for  
23 Rambus was on June 6 and 8, 1998. Except as expressly admitted, Rambus denies the allegations  
24 of paragraph no. 116.

25 **Rambus's Aiding and Abetting Neil Steinberg's**  
26 **Breach of Contractual Duties Owed to Samsung**

27 **PARAGRAPH NO. 117:**

28 During the Spring and Summer of 1998, Mr. Steinberg, in-house counsel for Samsung,

1 had a written employment contract with Samsung for a specific term, which permitted Mr.  
2 Steinberg to work only for Samsung during the term of that contract unless Samsung gave him  
3 permission otherwise. This contract also included specific obligations of nondisclosure and  
4 confidentiality, in addition to those imposed ethically and by law on Mr. Steinberg through his  
5 fiduciary capacity as an attorney. Specifically, the contract prohibited Mr. Steinberg from  
6 disclosing “any processes, formulas, improvements, inventions, discoveries, trade secrets, or  
7 other proprietary information” to any person without Samsung’s prior written consent.

8 **RESPONSE TO PARAGRAPH NO. 117:**

9 Rambus is without knowledge or information sufficient to form a belief as to the truth of  
10 the allegations in paragraph no. 117, and, on that basis, denies the same. Rambus denies the  
11 allegations of paragraph no. 117.

12 **PARAGRAPH NO. 118:**

13 Rambus was aware that Mr. Steinberg was employed as in-house counsel for Samsung  
14 under a written employment contract for a specific term. Rambus was further aware that at the  
15 time Mr. Steinberg’s employment began with Rambus, his written employment contract had not  
16 been terminated and was still in effect. Also during this time, Rambus knew that Mr. Steinberg’s  
17 contract included nondisclosure clauses and restrictions on additional employment, and that  
18 Samsung had not consented to (and was unaware of) Mr. Steinberg’s employment by Rambus.

19 **RESPONSE TO PARAGRAPH NO. 118:**

20 Rambus denies the allegations of paragraph no. 118.

21 **PARAGRAPH NO. 119:**

22 Nevertheless, contrary to Mr. Steinberg’s express contractual obligations to Samsung,  
23 Rambus employed Mr. Steinberg to perform work on behalf of Rambus. Upon information and  
24 belief, at the request of Rambus Mr. Steinberg actively worked to help Rambus plan patent  
25 prosecution strategies, including actually working on patent applications, patent enforcement  
26 strategies, document handling and retention strategies for use in litigation, and to take other  
27 measures to extract royalties from manufacturers of DRAMs, including Samsung, as outlined in  
28 paragraphs 102-109 above. Further, upon information and belief, Mr. Steinberg used information

1 about Samsung's business and DRAM products in working for Rambus, as outlined in paragraphs  
2 102-109 above, including but not limited to facts developed for the prosecution of the '956 patent  
3 and strategies for protection of Samsung's JEDEC-compliant products as partially implemented  
4 in the '956 patent, product roadmaps (plans for development of future products and plans for their  
5 release), and Samsung's own internal licensing discussions and internal litigation strategy  
6 discussions, while he was under contractual and fiduciary duties not to disclose such information  
7 about Samsung's business or use it contrary to Samsung's interests, regardless of whether such  
8 information was trade secret. As a result, Rambus intentionally interfered with the Steinberg-  
9 Samsung employment contract by hiring Mr. Steinberg in February of 1998.

10 **RESPONSE TO PARAGRAPH NO. 119:**

11 Rambus admits that Neil Steinberg worked as both in-house and outside counsel on  
12 intellectual property matters, including licensing and patent prosecution. Rambus is without  
13 knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph  
14 no. 119 about Mr. Steinberg's employment contract, and, on that basis, denies the same. Except  
15 as expressly admitted, Rambus denies the allegations of paragraph no. 119.

16 **PARAGRAPH NO. 120:**

17 Mr. Steinberg was obligated to disclose violations of his contractual duties to Samsung.  
18 Likewise Mr. Steinberg has continued in his testimony in later litigation, including his most  
19 recent testimony in this Court, to misrepresent his relationship and work for Rambus while  
20 employed by Samsung. Upon information and belief, Rambus has sponsored and promoted this  
21 false testimony.

22 **RESPONSE TO PARAGRAPH NO. 120:**

23 Rambus denies the allegations of paragraph no. 120.

24 **PARAGRAPH NO. 121:**

25 Mr. Steinberg remained silent and concealed from Samsung his work for Rambus in  
26 contravention of his on-going obligations with Samsung, including the concealment of  
27 information about his dual employment with Samsung and Rambus.  
28

**RESPONSE TO PARAGRAPH NO. 121:**

Rambus denies the allegations of paragraph no. 121.

**PARAGRAPH NO. 122:**

Samsung justifiably relied on Mr. Steinberg faithfully fulfilling his duties owed to Samsung, including the obligation to disclose violations of those duties. Samsung further justifiably relied on Mr. Steinberg's silence as indication that he did not violate his duties.

**RESPONSE TO PARAGRAPH NO. 122:**

Rambus denies the allegations of paragraph no. 122.

**PARAGRAPH NO. 123:**

Rambus was aware that Mr. Steinberg's duties to Samsung included the obligation to disclose violations of those duties. Nevertheless, Rambus secretly engaged Mr. Steinberg's services when Rambus was aware that Mr. Steinberg was still employed as an attorney by Samsung and facilitated Mr. Steinberg's silence on his dual employment and, upon information and belief, his use of information about Samsung's business and DRAM products in working for Rambus.

**RESPONSE TO PARAGRAPH NO. 123:**

Rambus denies the allegations of paragraph no. 123.

**PARAGRAPH NO. 124:**

Rambus knew or should have known that its intentional interference with the Steinberg-Samsung employment contract would be considered contrary to the purpose of maintaining a profitable business alliance between Rambus and Samsung. Nevertheless, Rambus concealed from Samsung that it had secretly interfered with the Steinberg-Samsung employment contract. Upon information and belief, Rambus continues to conceal the true nature of Mr. Steinberg's employment by asserting privilege over the work product Mr. Steinberg and Rambus admit he created, and presenting testimony as to the limited scope of Mr. Steinberg's work that is not consistent with documents showing additional business meetings between Rambus and Mr. Steinberg while Mr. Steinberg was employed by Samsung.



1     **RESPONSE TO PARAGRAPH NO. 124:**

2             Rambus denies the allegations of paragraph no. 124.

3     **PARAGRAPH NO. 125:**

4             Rambus, by its concealment, falsely represented to Samsung that it was still interested in  
5     faithfully remaining a business partner with Samsung in their profitable business alliance at a  
6     time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to  
7     Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony,  
8     and upon information and belief continues to sponsor false testimony, as well as destruction of  
9     documents, to conceal this wrongdoing, Rambus had a duty to speak.

10    **RESPONSE TO PARAGRAPH NO. 125:**

11            Rambus admits that Mr. Steinberg testified in a videotaped deposition, introduced in 2005  
12    at the unclean hands trial in *Rambus v. Infineon* in the Eastern District of Virginia, that he  
13    performed legal services for Rambus in June 1998. Rambus further admits that Rambus's  
14    30(b)(6) designee and Mr. Steinberg have testified that Mr. Steinberg's representation of Rambus  
15    prior to August 7, 1998 was 4.5 hours of work over one weekend on a project unrelated to the  
16    issues in this litigation. Rambus further admits that Mr. Steinberg testified in 2001 and April  
17    2004 that the first legal work he recalled doing for Rambus was on or about August 17, 1998.  
18    Rambus further admits that Mr. Steinberg signed a declaration on December 2, 2004 stating that  
19    after providing that earlier testimony, Mr. Steinberg had the opportunity to review certain  
20    documents that he had not seen prior to his earlier testimony and after his review of those  
21    documents, Mr. Steinberg then testified that he believed the first legal work that he performed for  
22    Rambus was on June 6 and 8, 1998. Except as expressly admitted, Rambus denies the allegations  
23    of paragraph no. 125.

24    **PARAGRAPH NO. 126:**

25            Rambus's intentional interference with Mr. Steinberg's contract with Samsung was  
26    publicly revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District  
27    Court for the Eastern District of Virginia in 2005 and could not have been discovered by  
28    Samsung before that time. Specifically, heavily redacted legal invoices from Mr. Steinberg to

1 Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned from  
2 Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
3 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
4 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
5 1998. These documents and facts were not discoverable by Samsung or anyone else outside of  
6 Rambus before 2005, and would remain concealed today if Rambus had not included as entries  
7 on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.  
8 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not*  
9 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
10 Samsung. Mr. Steinberg's perjury was a specific act of fraud by both Rambus and Mr. Steinberg  
11 that concealed Rambus's aiding and abetting of Mr. Steinberg's breaches of his fiduciary duties to  
12 Samsung, its intentional interference with Mr. Steinberg's employment contract with Samsung,  
13 and Rambus's unfair business practices. Rambus and Mr. Steinberg have likewise testified in this  
14 Court that Mr. Steinberg's representation of Rambus while employed by Samsung was limited to  
15 a single unrelated project one weekend in early June 1998. However, documents produced by  
16 Rambus clearly imply this testimony is false as they show meetings and/or interactions between  
17 Rambus and Mr. Steinberg while Mr. Steinberg was employed by Samsung for business purposes  
18 at times other than this one weekend. Upon information and belief, this testimony presented by  
19 Rambus and Mr. Steinberg as recently as 2006 in this Court is part of a continuing fraud and  
20 deception to cover up Rambus's and Mr. Steinberg's wrongful acts.

21 **RESPONSE TO PARAGRAPH NO. 126:**

22 Rambus admits that Mr. Steinberg testified in a videotaped deposition, introduced in 2005  
23 at the unclean hands trial in *Rambus v. Infineon* in the Eastern District of Virginia, that he  
24 performed legal services for Rambus in June 1998. Rambus further admits that Rambus's  
25 30(b)(6) designee and Mr. Steinberg have testified that Mr. Steinberg's representation of Rambus  
26 prior to August 7, 1998 was 4.5 hours of work over one weekend on a project unrelated to the  
27 issues in this litigation. Rambus further admits that Mr. Steinberg testified in 2001 and April  
28 2004 that the first legal work he recalled doing for Rambus was on or about August 17, 1998.

1 Rambus further admits that Mr. Steinberg signed a declaration on December 2, 2004 stating that  
2 after providing that earlier testimony, Mr. Steinberg had the opportunity to review certain  
3 documents that he had not seen prior to his earlier testimony and after his review of those  
4 documents, Mr. Steinberg then testified that he believed the first legal work that he performed for  
5 Rambus was on June 6 and 8, 1998. Except as expressly admitted, Rambus denies the allegations  
6 of paragraph no. 126.

7 **Rambus's Aiding and Abetting Neil Steinberg's**  
8 **Breach of Fiduciary Duties Owed to Samsung, a Former Client**

9 **PARAGRAPH NO. 127:**

10 Mr. Steinberg ended his employment with Samsung in August 1998.

11 **RESPONSE TO PARAGRAPH NO. 127:**

12 Rambus is without knowledge or information sufficient to form a belief as to the truth of  
13 the allegations in paragraph no. 127, and, on that basis, denies the same. Rambus denies the  
14 allegations of paragraph no. 127.

15 **PARAGRAPH NO. 128:**

16 Separate from his duties when employed at Samsung, after ending his employment with  
17 Samsung, Mr. Steinberg owed Samsung those duties owed to a former client by a lawyer,  
18 including the duty to not disclose information about Samsung's business or to use it contrary to  
19 Samsung's interests, regardless of whether such information was trade secret, and the duty to  
20 obtain informed consent before representing parties adverse to Samsung in matters substantially  
21 related to those Mr. Steinberg worked on for Samsung.

22 **RESPONSE TO PARAGRAPH NO. 128:**

23 Rambus admits that a lawyer has ethical duties that vary from jurisdiction to jurisdiction,  
24 and the precise parameters of Mr. Steinberg's ethical duties to Samsung constitute a legal  
25 conclusion to which no response is required. Except as expressly admitted, Rambus denies the  
26 allegations of paragraph no. 128.

27 **PARAGRAPH NO. 129:**

28 Nevertheless, upon information and belief, Mr. Steinberg continued to actively work to

1 help Rambus plan patent prosecution strategies, including actually working on patent  
2 applications, patent enforcement strategies, document handling and retention strategies for use in  
3 litigation, and to take other measures to extract royalties from manufacturers of DRAMs,  
4 including Samsung, as outlined in paragraphs 102-109 above. Further, upon information and  
5 belief, Mr. Steinberg used information about Samsung's business and DRAM products in  
6 working for Rambus, as outlined in paragraphs 102-109 above, including but not limited to his  
7 work on the '956 patent application, Samsung product roadmaps, Samsung licensing strategies  
8 and litigation strategies he had been part of while employed at Samsung, while he was under  
9 contractual and fiduciary duties not to disclose such information about Samsung's business or to  
10 use it contrary to Samsung's interests, regardless of whether such information was trade secret.

11 **RESPONSE TO PARAGRAPH NO. 129:**

12 Rambus admits that Neil Steinberg worked as both in-house and outside counsel on  
13 intellectual property matters, including licensing and patent prosecution. Except as expressly  
14 admitted, Rambus denies the allegations of paragraph no. 129.

15 **PARAGRAPH NO. 130:**

16 Mr. Steinberg worked for Rambus without first obtaining Samsung's informed consent.

17 **RESPONSE TO PARAGRAPH NO. 130:**

18 Rambus is without knowledge or information sufficient to form a belief as to the truth of  
19 the allegations in paragraph no. 130, and, on that basis, denies the same. Rambus denies the  
20 allegations of paragraph no. 130.

21 **PARAGRAPH NO. 131:**

22 Mr. Steinberg remained silent and concealed from Samsung all the facts and  
23 circumstances regarding his representation of Rambus in contravention of his on-going  
24 obligations with Samsung, including, on information and belief, information about his active  
25 work to help Rambus plan patent prosecution strategies, including actually working on patent  
26 applications, patent enforcement strategies, document handling and retention strategies for use in  
27 litigation, and to take other measures to extract royalties from manufacturers of DRAMs,  
28 including Samsung, as outlined in paragraphs 102-109 above. In addition, he failed to inform

1 Samsung of, upon information and belief, his use of information about Samsung's business and  
2 DRAM products in working for Rambus, as outlined in paragraphs 102-109 above, while he was  
3 under contractual and fiduciary duties not to disclose such information about Samsung's business  
4 or use it contrary to Samsung's interests, regardless of whether such information was trade secret.

5 **RESPONSE TO PARAGRAPH NO. 131:**

6 Rambus denies the allegations of paragraph no. 131.

7 **PARAGRAPH NO. 132:**

8 Rambus was aware that Mr. Steinberg was obligated to safeguard Samsung information  
9 and to obtain informed consent from Samsung before working on certain matters adverse to  
10 Samsung. Rambus was further aware of the fiduciary capacity in which Mr. Steinberg had  
11 worked for Samsung, and of the duties that Mr. Steinberg continued to owe to Samsung.

12 **RESPONSE TO PARAGRAPH NO. 132:**

13 Rambus denies the allegations of paragraph no. 132.

14 **PARAGRAPH NO. 133:**

15 Mr. Steinberg was obligated to disclose violations of those duties to Samsung.

16 **RESPONSE TO PARAGRAPH NO. 133:**

17 Rambus denies the allegations of paragraph no. 133.

18 **PARAGRAPH NO. 134:**

19 Mr. Steinberg remained silent and concealed from Samsung his work for Rambus in  
20 contravention of his on-going obligations with Samsung, as did Rambus.

21 **RESPONSE TO PARAGRAPH NO. 134:**

22 Rambus denies the allegations of paragraph no. 134.

23 **PARAGRAPH NO. 135:**

24 Samsung justifiably relied on Mr. Steinberg faithfully fulfilling his duties owed to  
25 Samsung, including the obligation to disclose violations of those duties. Samsung further  
26 justifiably relied on Mr. Steinberg's silence as indication that he did not violate his duties.

27 **RESPONSE TO PARAGRAPH NO. 135:**

28 Rambus denies the allegations of paragraph no. 135.

1 **PARAGRAPH NO. 136:**

2 Rambus was aware that Mr. Steinberg's duties to Samsung included the obligation to  
3 disclose violations of those duties. Nevertheless, with awareness of Mr. Steinberg's continuing  
4 fiduciary responsibilities to Samsung, Rambus secretly engaged Mr. Steinberg's services that,  
5 upon information and belief, made use of Samsung information and dealt with matters adverse to  
6 Samsung and facilitated Mr. Steinberg's silence on, upon information and belief, his use of  
7 information about Samsung's business and DRAM products in working for Rambus.

8 **RESPONSE TO PARAGRAPH NO. 136:**

9 Rambus denies the allegations of paragraph no. 136.

10 **PARAGRAPH NO. 137:**

11 Rambus knew or should have known that allowing Mr. Steinberg to work on matters  
12 adverse to Samsung or that made use of Samsung information would be considered contrary to  
13 the purpose of maintaining a profitable business alliance between Rambus and Samsung.  
14 Nevertheless, Rambus concealed from Samsung that it had secretly engaged Mr. Steinberg's  
15 services that, upon information and belief, made use of Samsung information and dealt with  
16 matters adverse to Samsung and facilitated Mr. Steinberg's silence on, upon information and  
17 belief, his use of information about Samsung's business and DRAM products in working for  
18 Rambus. Upon information and belief, Rambus further sponsored false testimony by Mr.  
19 Steinberg in court proceedings to continue to conceal the nature and extent of his relationship  
20 with Rambus.

21 **RESPONSE TO PARAGRAPH NO. 137:**

22 Rambus denies the allegations of paragraph no. 137.

23 **PARAGRAPH NO. 138:**

24 Rambus, by its concealment, falsely represented to Samsung that it was still interested in  
25 faithfully remaining a business partner with Samsung in their profitable business alliance at a  
26 time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to  
27 Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony,  
28 and upon information and belief continues to sponsor false testimony, as well as destruction of

1 documents, to conceal this wrongdoing, Rambus had a duty to speak.

2 **RESPONSE TO PARAGRAPH NO. 138:**

3 Rambus denies the allegations of paragraph no. 138.

4 **PARAGRAPH NO. 139:**

5 The full nature of Mr. Steinberg's employment with Rambus, including work done for  
6 Rambus that was adverse to Samsung's interests or that made use of information about  
7 Samsung's business, was publicly revealed for the first time during the trial of *Rambus v.*  
8 *Infineon*, in the U.S. District Court for the Eastern District of Virginia in 2005, and could not have  
9 been discovered by Samsung before that time. Specifically, heavily redacted legal invoices from  
10 Mr. Steinberg to Rambus dated in June of 1998, two months before Mr. Steinberg resigned from  
11 Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
12 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
13 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
14 1998. These documents and facts were not discoverable by Samsung or anyone else outside of  
15 Rambus before 2005, and would remain concealed today if Rambus had not included as entries  
16 on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.  
17 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not*  
18 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
19 Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and  
20 abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional  
21 interference with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair  
22 business practices. Upon information and belief, Rambus and Mr. Steinberg have continued to  
23 misrepresent their relationship in false testimony in court proceedings in 2006, where they  
24 presented evidence that the Steinberg relationship with Rambus prior to his departure was limited  
25 to one project over one weekend in June 1998 on a matter unrelated to Rambus's patents, when  
26 documents produced and other evidence show that there were other contacts between Rambus and  
27 Samsung while Samsung employed Mr. Steinberg.

28 **RESPONSE TO PARAGRAPH NO. 139:**

1 Rambus admits that Mr. Steinberg testified in a videotaped deposition, introduced in 2005  
2 at the unclean hands trial in *Rambus v. Infineon* in the Eastern District of Virginia, that he  
3 performed legal services for Rambus in June 1998. Rambus further admits that Rambus's  
4 30(b)(6) designee and Mr. Steinberg have testified that Mr. Steinberg's representation of Rambus  
5 prior to August 7, 1998 was 4.5 hours of work over one weekend on a project unrelated to the  
6 issues in this litigation. Rambus further admits that Mr. Steinberg testified in 2001 and April  
7 2004 that the first legal work he recalled doing for Rambus was on or about August 17, 1998.  
8 Rambus further admits that Mr. Steinberg signed a declaration on December 2, 2004 stating that  
9 after providing that earlier testimony, Mr. Steinberg had the opportunity to review certain  
10 documents that he had not seen prior to his earlier testimony and after his review of those  
11 documents, Mr. Steinberg then testified that he believed the first legal work that he performed for  
12 Rambus was on June 6 and 8, 1998. Except as expressly admitted, Rambus denies the allegations  
13 of paragraph no. 139.

14 **Rambus's Anticompetitive Patent Enforcement**  
15 **Strategies and Intentional Spoliation of Evidence**

16 **PARAGRAPH NO. 140:**

17 Rambus was organized to exploit the invention claimed by Mark Horowitz and Michael  
18 Farmwald of a narrow, multiplexed bus, and a packet-based memory interface.

19 **RESPONSE TO PARAGRAPH NO. 140:**

20 Rambus was founded to promote and develop the revolutionary inventions of Mark  
21 Horowitz and Michael Farmwald. Except as expressly admitted, Rambus denies the allegations  
22 of paragraph no. 140.

23 **PARAGRAPH NO. 141:**

24 In 1990, Rambus filed an application for a patent on the Horowitz-Farmwald claimed  
25 invention(s). Rambus believed that this application fully and comprehensively described and  
26 claimed any and all inventions made by Horowitz and Farmwald.

27 **RESPONSE TO PARAGRAPH NO. 141:**

28 Rambus admits that, in 1990, United States patent application serial no. 07/510,898 was



1 filed and assigned to Rambus. Except as expressly admitted, Rambus denies the allegations of  
2 paragraph no. 141.

3 **PARAGRAPH NO. 142:**

4 Rambus implemented the Horowitz-Farmwald ideas in a specific interface which it called  
5 Rambus DRAM, or “RDRAM.”

6 **RESPONSE TO PARAGRAPH NO. 142:**

7 Rambus admits that it promoted certain of its technology under the acronym RDRAM.  
8 Except as expressly admitted, Rambus denies the allegations of paragraph no. 142.

9 **PARAGRAPH NO. 143:**

10 Rambus’s original and preferred objective was to establish RDRAM as the commodity  
11 DRAM interface.

12 **RESPONSE TO PARAGRAPH NO. 143:**

13 Rambus admits that it licensed, and encouraged the manufacture and use of, certain of its  
14 technology under the acronym RDRAM and hoped that it would be successful. Except as  
15 expressly admitted, Rambus denies the allegations of paragraph no. 143.

16 **PARAGRAPH NO. 144:**

17 To this end, Rambus began as early as 1991 to actively market RDRAM to the DRAM  
18 industry including DRAM manufacturers, PC enablers including Intel, and industrial DRAM  
19 users.

20 **RESPONSE TO PARAGRAPH NO. 144:**

21 Rambus denies the allegations of paragraph no. 144.

22 **PARAGRAPH NO. 145:**

23 From the beginning of its RDRAM marketing efforts, Rambus licensed and offered to  
24 license the whole of its interface technology, including any future patents. Prospective licensees  
25 reasonably understood that they were bargaining for a license relating to any existing or future  
26 Rambus patents.

27 **RESPONSE TO PARAGRAPH NO. 145:**

28 Rambus denies the allegations of paragraph no. 145.

1 **PARAGRAPH NO. 146:**

2 In marketing RDRAM to the DRAM industry, Rambus described the Rambus interface  
3 extensively. Such descriptions invariably emphasized the unique and allegedly “revolutionary”  
4 characteristics of the Horowitz-Farmwald ideas, namely the single narrow and multiplexed bus  
5 and the packet based communication protocol.

6 **RESPONSE TO PARAGRAPH NO. 146:**

7 Rambus admits that in marketing RDRAM to the DRAM industry, Rambus described the  
8 Rambus interface extensively. Except as expressly admitted, Rambus denies the allegations of  
9 paragraph no. 146.

10 **PARAGRAPH NO. 147:**

11 In marketing RDRAM to the DRAM industry, Rambus frequently and typically contrasted  
12 RDRAM with competitive interfaces, including the conventional DRAM interfaces then in  
13 common use, and with developing DRAM interfaces, including the SDRAM interfaces being  
14 standardized at JEDEC and the SyncLink interface.

15 **RESPONSE TO PARAGRAPH NO. 147:**

16 Rambus denies the allegations of paragraph no. 147.

17 **PARAGRAPH NO. 148:**

18 During the 1990’s, Rambus participated actively in industry meetings on standards for  
19 SDRAMs and DDR SDRAMs at the Joint Electron Device Engineering Council (“JEDEC”).  
20 Rambus improperly used information it obtained as a result of its membership in JEDEC to  
21 secure additional patents and claims. Rambus’s use of this information was in violation of  
22 policies applicable to all JEDEC members. Further, Rambus’s failure to disclose to other  
23 members of JEDEC that it had taken information from JEDEC to craft its patent claims, only to  
24 seek to enforce its claims against JEDEC-compliant products many years after JEDEC members  
25 had invested heavily in the technology without notice of Rambus’s conduct estops Rambus from  
26 enforcing its patents against JEDEC members.

27 **RESPONSE TO PARAGRAPH NO. 148:**

28 Rambus denies the allegations of paragraph no. 148.

1 **PARAGRAPH NO. 149:**

2 By February 1998, Rambus decided to litigate in order to license its purported SDRAM  
3 and DDR SDRAM technology to the DRAM industry, as a means of eliminating or  
4 disadvantaging such alternatives to Rambus technology. By the Spring of 1998, before it  
5 commenced its litigation strategy, Rambus was actively seeking to improve its SDRAM and DDR  
6 SDRAM patent portfolio.

7 **RESPONSE TO PARAGRAPH NO. 149:**

8 Rambus denies the allegations of paragraph no. 149.

9 **PARAGRAPH NO. 150:**

10 Central to this litigation strategy was the repeated, company-wide, destruction of relevant  
11 documents. Rambus intentionally destroyed millions of pages of documents that it knew would  
12 be relevant to its lawsuits against the users of competing PC DRAM interface technologies,  
13 including this lawsuit against Samsung and others. This strategy also included recruiting  
14 Samsung employees to work for Rambus as employees or attorneys.

15 **RESPONSE TO PARAGRAPH NO. 150:**

16 Rambus denies the allegations of paragraph no. 150.

17 **PARAGRAPH NO. 151:**

18 During meetings held in February 1998, Rambus and its attorneys developed a multi-step  
19 litigation strategy against DRAM manufacturers that included making Rambus “battle ready”  
20 prior to litigation. The strategy involved, among other things, destroying millions of relevant  
21 documents and attempting to mask that wanton destruction under the guise of a document  
22 “retention” policy.

23 **RESPONSE TO PARAGRAPH NO. 151:**

24 Rambus denies the allegations of paragraph no. 151.

25 **PARAGRAPH NO. 152:**

26 At the time this strategy was hatched, Rambus expressly contemplated suing DRAM  
27 manufacturers on a number of theories, including breach of contract claims against those  
28 manufacturers who were RDRAM licensees, patent-infringement claims against those who relied

1 on competing PC DRAM interface technology, and an action for collusion and/or unfair  
2 competition against the DRAM suppliers.

3 **RESPONSE TO PARAGRAPH NO. 152:**

4 Rambus denies the allegations of paragraph no. 152.

5 **PARAGRAPH NO. 153:**

6 Rambus's stated goals for the third quarter of 1998 included implementing its document  
7 destruction action plan. This plan included a staff training event and a "summer housecleaning."

8 **RESPONSE TO PARAGRAPH NO. 153:**

9 Rambus admits that it adopted a document retention policy in 1998. Rambus further  
10 admits that its counsel, Dan Johnson, gave a presentation to certain Rambus employees regarding  
11 document retention. Rambus further admits that on September 2, 1998 and August 1999, Rambus  
12 held housekeeping events or "Shred Days." Except as expressly admitted, Rambus denies the  
13 allegations of paragraph no. 153.

14 **PARAGRAPH NO. 154:**

15 In September 1998, Rambus commenced its first known "shred party." Rambus hired a  
16 shredding service to come to Rambus's corporate headquarters in Mountain View, California on  
17 September 3, 1998. In accordance with Rambus's litigation strategy, Rambus distributed burlap  
18 bags to all of its employees a week in advance of the shredding to enable those employees to  
19 identify and collect documents to be shredded. During this first shred party, Rambus began to  
20 "cleanse" its patent prosecution and related files by destroying documents related to, at least,  
21 patents that Rambus was planning to enforce against the DRAM industry. The destroyed  
22 documents related to, among others, patents to which other Rambus patents claim priority,  
23 including patents that issued after the first shred party. Following "Shred Day," all Rambus  
24 employees were invited to a party at 5:00 p.m. on September 3, 1998 to celebrate completion of  
25 the document destruction.

26 **RESPONSE TO PARAGRAPH NO. 154:**

27 Rambus admits that on September 2, 1998, Rambus held a "Shred Day" and that some  
28 documents were collected in burlap bags and shredded in a shredding truck on that day. Rambus

1 further admits that there was an office gathering at the end of the day on September 2, 1998.  
2 Except as expressly admitted, Rambus denies the allegations of paragraph no. 154.

3 **PARAGRAPH NO. 155:**

4 All told, Rambus employees shredded thousands of pages of documents on Shred Day  
5 1998. In fact, so many documents were bagged for shredding that the shredding truck was filled  
6 to capacity and had to return another day to finish the job. By the end of the shredding, Rambus  
7 had disposed of over 185 burlap sacks full of documents, and 60 banker's boxes full of  
8 documents. Upon information and belief, the destruction of documents deliberately included files  
9 and papers that would show the projects Mr. Steinberg worked on for Rambus while employed by  
10 Samsung, and misuse of Samsung's information about Samsung's products, its '956 patent  
11 application, patent strategies and litigation and licensing strategies, as well as contacts between  
12 Rambus and Mr. Steinberg while he was employed at Samsung.

13 **RESPONSE TO PARAGRAPH NO. 155:**

14 Rambus admits that on September 2, 1998, Rambus held a "Shred Day" and that some  
15 documents were collected in burlap bags and shredded in a shredding truck on that day. Rambus  
16 further admits that a shredding truck returned to Rambus the next day. Except as expressly  
17 admitted, Rambus denies the allegations of paragraph no. 155.

18 **PARAGRAPH NO. 156:**

19 During April 1999, Rambus had its patent attorneys "cleanse" their files.

20 **RESPONSE TO PARAGRAPH NO. 156:**

21 Rambus denies the allegations of paragraph no. 156.

22 **PARAGRAPH NO. 157:**

23 In 1999, Rambus added further detail to its anticompetitive strategy. Rambus's 1999  
24 litigation strategy expressly anticipated and planned for a potential "Nuclear Winter Scenario" in  
25 the event Intel was to decide to move away from RDRAM to an alternative technology, such as  
26 DDR SDRAM, SLDRAM, or some other PC DRAM interface technology that Rambus feared  
27 might have been created by the DRAM manufacturers. Rambus's planned response was to  
28 discipline Intel "by cutting off" Intel's access to alternative technology, thus "threatening Intel's

1 current and future microprocessor based products.”

2 **RESPONSE TO PARAGRAPH NO. 157:**

3 Rambus denies the allegations of paragraph no. 157.

4 **PARAGRAPH NO. 158:**

5 As a central part of its litigation plan, Rambus contemplated filing complaints against  
6 various DRAM manufacturers. The claims Rambus expressly contemplated in 1999 included: (i)  
7 patent infringement claims against users of alternative technologies to RDRAM technology; (ii)  
8 breach of contract claims “based on cancellation of RDRAM production;” (iii) fraud based on a  
9 theory that the DRAM companies never intended to manufacture RDRAM, and (iv) the making  
10 of statements about Rambus that the DRAM companies knew to be untrue; (v) unfair  
11 competition; (vi) antitrust violations; and (vii) any other claims that might be brought based on a  
12 theory that the DRAM manufacturers set out to destroy Rambus through their actions. These  
13 claims planned in 1999 include the very claims Rambus has alleged in its Complaint in this  
14 action.

15 **RESPONSE TO PARAGRAPH NO. 158:**

16 Rambus denies the allegations of paragraph no. 158.

17 **PARAGRAPH NO. 159:**

18 In furtherance of Rambus’s “nuclear winter” litigation scenario, Rambus set a series of  
19 “IP Goals” for 1999. For the third quarter of 1999, the “Licensing/Litigation Readiness Goals”  
20 included the following verbatim bullet-point items:

21 “E. Prepare litigation strategy against 1 of 3 manufacturers (re: 3D)

22 “F. Ready for Litigation with 30 days notice

23 “G. Organize 1999 shredding party at Rambus”

24 **RESPONSE TO PARAGRAPH NO. 159:**

25 Rambus admits that there is a 1999 document that contains the text of the three bullet  
26 point items set forth in paragraph no. 159. Except as expressly admitted, Rambus denies the  
27 allegations of paragraph no. 159.

1 **PARAGRAPH NO. 160:**

2 During August 1999, Rambus commenced its second known “shred party.” During this  
3 second shred party, Rambus again “cleansed” its patent prosecution and related files by  
4 destroying additional documents related to, at least, patents that Rambus was planning to enforce  
5 or was litigating against the DRAM industry. The destroyed documents related to, among others,  
6 patents to which other Rambus patents claim priority, including patents that issued after the  
7 second shred party. All told, an additional 150 burlap bags filled with documents were destroyed -  
8 the equivalent of 188 banker’s boxes or almost a half-a-million pages. Upon information and  
9 belief, the destruction of documents deliberately included files and papers that would show the  
10 projects Mr. Steinberg worked on for Rambus while employed by Samsung, and misuse of  
11 Samsung’s information about Samsung’s products, its ’956 patent application, patent strategies  
12 and litigation and licensing strategies, as well as contacts between Rambus and Mr. Steinberg  
13 while he was employed at Samsung.

14 **RESPONSE TO PARAGRAPH NO. 160:**

15 Rambus admits that in August 1999 Rambus held a “Shred Day.” Except as expressly  
16 admitted, Rambus denies the allegations of paragraph no. 160.

17 **PARAGRAPH NO. 161:**

18 During the Spring of 2000, Rambus was notified by its outside counsel that it had a duty  
19 to preserve all documents related to its patents and/or the litigation against DRAM manufacturers.

20 **RESPONSE TO PARAGRAPH NO. 161:**

21 Rambus admits that prior to filing suit against *Hitachi*, Rambus’s outside lawyers  
22 instructed dozens of Rambus employees that they needed to preserve documents that could be  
23 relevant to the litigation. Except as expressly admitted, Rambus denies the allegations of  
24 paragraph no. 161.

25 **PARAGRAPH NO. 162:**

26 During June 2000 and after its litigation with Hitachi settled, Rambus again asked its  
27 patent attorneys to destroy documents.  
28

1     **RESPONSE TO PARAGRAPH NO. 162:**

2             Rambus denies the allegations of paragraph no. 162.

3     **PARAGRAPH NO. 163:**

4             During December 2000, while Rambus was actively litigating against numerous  
5 companies on antitrust, fraud, and patent claims, Rambus commenced its third known “shred  
6 party.” During this third shred party, Rambus again “cleansed” its patent prosecution and related  
7 files by destroying additional documents related to, at least, patents that Rambus was enforcing  
8 and litigating against the DRAM industry. The destroyed documents related to, among others,  
9 patents to which other Rambus patents claim priority, including patents that issued after the third  
10 shred party. Shred Day 2000 turned out to be the largest Shred Day of them all. All told, Rambus  
11 destroyed over 575 banker’s boxes full of documents – one-and-a-half million pages – on Shred  
12 Day 2000. Although Rambus was then litigating numerous actions, Rambus employees were  
13 given no instructions to retain documents related to the litigations. To ensure that its strategy to  
14 dispose of critical evidence worked, Rambus did not maintain any record of which documents it  
15 destroyed. Upon information and belief, the destruction of documents deliberately included files  
16 and papers that would show the parties’ interpretation of the 2000 SDR/DDR license between  
17 Samsung and Rambus consistent with Samsung’s claims in this case and contrary to positions  
18 Rambus has taken in this lawsuit, deliberate efforts to deceive Samsung during the strategic  
19 alliance between Samsung and Rambus, misuse of information from the projects Mr. Steinberg  
20 worked on for Rambus while employed by Samsung, and misuse of Samsung’s information about  
21 Samsung’s products, its ’956 patent application, patent strategies and litigation and licensing  
22 strategies, as well as contacts between Rambus and Mr. Steinberg while he was employed at  
23 Samsung.

24     **RESPONSE TO PARAGRAPH NO. 163:**

25             Rambus denies the allegations of paragraph no. 163.

26     **PARAGRAPH NO. 164:**

27             Samsung could not have discovered Rambus’s destruction of documents until it was  
28 revealed publicly in a trial in *Rambus v. Infineon* in the Eastern District of Virginia in February



2005. Specifically, voluminous Rambus documents produced for the very first time in connection with the *Infineon* unclean-hands trial in early 2005 catalogued Rambus's adoption of a document retention policy in early 1998, its massive destruction of documents during at least three separate company-wide "Shred Days," and its instructions to outside patent counsel to destroy numerous documents from his Rambus patent files – documents that a patent-infringement defendant might use to defend against Rambus's infringement claims. These documents and facts were not discoverable by Samsung or anyone else outside of Rambus before 2005, and would remain concealed today if the *Infineon* court had not broadly pierced Rambus's attorney-client privilege under the crime-fraud exception during preparations for the 2005 unclean-hands trial.

**RESPONSE TO PARAGRAPH NO. 164:**

Rambus admits that the Infineon court issued orders in 2001 and 2004 that pierced Rambus's attorney client privilege and work product protections such that Rambus was compelled to produce privileged documents in litigation. Except as expressly admitted, Rambus denies the allegations of paragraph no. 164.

**PARAGRAPH NO. 165:**

Rambus's document destruction covered all major categories of documents generated in the ordinary course of Rambus's business, such as e-mail communications, notes of contract negotiations, and drafts and other information useful in ascertaining the truth and in testing the validity of the positions taken by Rambus in this and its other lawsuits. The shredding included the destruction of evidence that related to, among other things:

- a. Rambus's prosecution of its patents,
- b. the relationship of Rambus's patent applications and pending claims to industry standards,
- c. presentations to Rambus's board of directors regarding intellectual property,
- d. potentially damaging or invalidating prior art related to patents asserted against DRAM manufacturers, including Samsung, as part of Rambus's litigation strategy,
- e. Rambus's draft license agreements and documents related to the negotiations for such license agreements, and

1 f. on information and belief, other documents supporting Samsung's positions and  
2 affirmative defenses in this case, and the facts alleged by Samsung in its Counterclaims, including  
3 but not limited to the interpretation and negotiation of the 2000 SDR/DDR license between  
4 Samsung and Rambus, Rambus's deception of Samsung during their strategic partnership (by  
5 planning infringement litigation against Samsung while promoting their relationship), and the  
6 nature and extent of Mr. Steinberg's breach of fiduciary duties while employed by Samsung and  
7 after his employment by Samsung.

8 **RESPONSE TO PARAGRAPH NO. 165:**

9 Rambus denies the allegations in paragraph no. 165.

10 **PARAGRAPH NO. 166:**

11 Rambus's wholesale destruction of these and other categories of documents was intended  
12 to and has prejudiced Samsung in this lawsuit, as well as other DRAM manufacturers and the  
13 end-users of DRAM technology. Samsung can only speculate as to what documents were  
14 destroyed because Rambus kept no log of what was shredded. Nevertheless, based on what is  
15 revealed in those documents that *were* retained, Samsung has every reason to believe the  
16 destroyed documents contained information that would further bring to light the wrongs by  
17 Rambus that are alleged in these Counterclaims.

18 **RESPONSE TO PARAGRAPH NO. 166:**

19 Rambus admits that it kept no log of the documents that were shredded in the September  
20 1998 and August 1999 Shred Days. Except as expressly admitted, Rambus denies the allegations  
21 in paragraph no. 166.

22 **PARAGRAPH NO. 167:**

23 Rambus's vice president of engineering testified under oath that he was ordered to purge  
24 his files at least in part because "such materials are discoverable in subsequent litigations." A  
25 lawyer in Rambus's in-house legal department testified that one of the understood reasons behind  
26 the "Shred Days" was that "some of that stuff is discoverable."

27 **RESPONSE TO PARAGRAPH NO. 167:**

28 Rambus denies the allegations of paragraph no. 167.

1 **PARAGRAPH NO. 168:**

2 While attempting to make itself “battle ready,” Rambus launched its litigation campaign  
3 against the DRAM manufacturers, with numerous patent suits against multiple DRAM  
4 manufacturers in various U.S. federal courts, as well as patent courts in Italy, German, France,  
5 and the United Kingdom.

6 **RESPONSE TO PARAGRAPH NO. 168:**

7 Rambus denies the allegations of paragraph no. 168.

8 **PARAGRAPH NO. 169:**

9 In the course of its lawsuits against the DRAM manufacturers, Rambus engaged in further  
10 litigation misconduct, including permitting its executives, attorneys, and employees to offer false  
11 or misleading testimony in multiple depositions about Rambus’s destruction of documents. In  
12 one such action brought by Rambus against Infineon in the Eastern District of Virginia, the  
13 Honorable Robert Payne found Rambus’s spoliation and perjury so egregious that he dismissed  
14 summarily Rambus’s claims against Infineon. Having been presented with evidence of Rambus’s  
15 (and its lawyers’) misconduct, Judge Payne could only remark “Why are all these people lying?”  
16 Judge Payne felt compelled to warn all involved that their destruction of evidence could result in  
17 jail terms. Rambus sponsored false testimony by Mr. Steinberg and its executives in litigation,  
18 only conceding some of the testimony was false as recently as 2006, while continuing to present  
19 testimony inconsistent with its own records.

20 **RESPONSE TO PARAGRAPH NO. 169:**

21 Rambus denies the allegations of paragraph no. 169.

22 **PARAGRAPH NO. 170:**

23 Rambus knew or should have known that its actions in implementing its strategy to  
24 exploit its anticompetitive agreements and litigation scheme against the DRAM manufacturers,  
25 including Samsung, would be considered contrary to the purpose of maintaining a profitable  
26 business alliance between Rambus and Samsung. Nevertheless, Rambus engaged in such actions.

27 **RESPONSE TO PARAGRAPH NO. 170:**

28 Rambus denies the allegations of paragraph no. 170.

1     **PARAGRAPH NO. 171:**

2             Rambus, by its concealment, falsely represented to Samsung that it was still interested in  
3     faithfully remaining a business partner with Samsung in their profitable business alliance at a  
4     time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to  
5     Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony,  
6     and upon information and belief continues to sponsor false testimony, as well as destruction of  
7     documents, to conceal this wrongdoing, Rambus had a duty to speak.

8     **RESPONSE TO PARAGRAPH NO. 171:**

9             Rambus denies the allegations of paragraph no. 171.

10    **PARAGRAPH NO. 172:**

11            Rambus's destruction of documents in anticipation of litigation with Samsung, its unfair  
12    employment of Neil Steinberg, and the full nature and extent of the unfair conduct by Rambus,  
13    were publicly revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District  
14    Court for the Eastern District of Virginia in 2005, and could not have been discovered by  
15    Samsung before that time. Specifically, voluminous Rambus documents produced for the very  
16    first time in connection with the *Infineon* unclean-hands trial in early 2005 catalogued Rambus's  
17    adoption of a document retention policy in early 1998, its massive destruction of documents  
18    during at least three separate company-wide "Shred Days," and its instructions to outside patent  
19    counsel to destroy numerous documents from his Rambus patent files – documents that a patent-  
20    infringement defendant might use to defend against Rambus's infringement claims. These  
21    documents and facts were not discoverable by Samsung or anyone else outside of Rambus before  
22    2005, and would remain concealed today if the *Infineon* court had not broadly pierced Rambus's  
23    attorney-client privilege under the crime-fraud exception during preparations for the unclean-  
24    hands trial. In addition, heavily redacted legal invoices from Mr. Steinberg to Rambus dated in  
25    June and July of 1998, two months before Mr. Steinberg resigned from Samsung, were produced  
26    by Rambus for the very first time in connection with the *Infineon* unclean-hands trial in early  
27    2005. Furthermore, Mr. Steinberg testified in a deposition introduced by video at the unclean-  
28    hands trial that he performed legal services for Rambus beginning in June 1998. These documents

1 and facts were not discoverable by Samsung or anyone else outside of Rambus before 2005, and  
2 would remain concealed today if Rambus had not included as entries on its *Infineon* privilege log  
3 two documents prepared by Mr. Steinberg in June and July of 1998. Indeed, Mr. Steinberg had  
4 previously falsely testified in 2001 and again in 2004 that he had *not* performed any legal work  
5 for Rambus prior to August 17, 1998, the date he resigned from Samsung. Mr. Steinberg's  
6 perjury was a specific act of fraud that concealed Rambus's aiding and abetting of Mr.  
7 Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference with Mr.  
8 Steinberg's employment contract with Samsung, and Rambus's unfair business practices. Upon  
9 information and belief, Mr. Steinberg and Rambus continue to conceal the true extent and nature  
10 of their relationship by assertion of privilege over work Mr. Steinberg did for Rambus while  
11 employed by Samsung, and by testifying to the limited engagement of one weekend in June,  
12 which is inconsistent with records produced by Rambus (which appear incomplete).

13 **RESPONSE TO PARAGRAPH NO. 172:**

14 Rambus admits that Mr. Steinberg testified in a videotaped deposition, introduced in 2005  
15 at the unclean hands trial in *Rambus v. Infineon* in the Eastern District of Virginia, that he  
16 performed legal services for Rambus in June 1998. Rambus further admits that Rambus's  
17 30(b)(6) designee and Mr. Steinberg have testified that Mr. Steinberg's representation of Rambus  
18 prior to August 7, 1998 was 4.5 hours of work over one weekend on a project unrelated to the  
19 issues in this litigation. Rambus further admits that Mr. Steinberg testified in 2001 and April  
20 2004 that the first legal work he recalled doing for Rambus was on or about August 17, 1998.  
21 Rambus further admits that Mr. Steinberg signed a declaration on December 2, 2004 stating that  
22 after providing that earlier testimony, Mr. Steinberg had the opportunity to review certain  
23 documents that he had not seen prior to his earlier testimony and after his review of those  
24 documents, Mr. Steinberg then testified that he believed the first legal work that he performed for  
25 Rambus was on June 6 and 8, 1998. Except as expressly admitted, Rambus denies the allegations  
26 of paragraph no. 172.

27 **PARAGRAPH NO. 173:**

28 Rambus continues today its strategy to exploit its anticompetitive agreements and

litigation scheme in an attempt to have “[o]ur standards dominate the DRAM interface market” and “[c]ollect royalties on all DRAM and controllers forever.”

**RESPONSE TO PARAGRAPH NO. 173:**

Rambus denies the allegations of paragraph no. 173.

**Evidence Revealed for the First Time During the *Infineon Unclean-Hands Trial* in 2005**

**PARAGRAPH NO. 174:**

As described above, the documents and facts that reveal Rambus’s conduct upon which Samsung’s counterclaims are based were revealed publicly for the first time during the 2005 unclean-hands trial between Rambus and Infineon in the Eastern District of Virginia, and could not have been discovered by Samsung before that time. More specifically, in addition to Samsung’s factual allegations above, which are based almost entirely on information first learned in 2005, at least the following facts first came to light during the 2005 *Infineon* trial and were included in the findings of fact in the Eastern District of Virginia court’s exceptional-case opinion in *Samsung v. Rambus*.<sup>4</sup> Samsung was not on notice that Mr. Steinberg had acted adversely to Samsung’s interest until it knew of these facts because, prior to that time, Samsung was not aware of Rambus’s long-standing and coordinated plan to extract royalties from the DRAM industry, and therefore could not have known the improper and integral role that Mr. Steinberg’s employment by Rambus played therein:

**\*\* REMAINDER OF PARAGRAPH NO. 174 REDACTED \*\***

**RESPONSE TO PARAGRAPH NO. 174:**

Rambus denies the allegations of paragraph no. 174.

**COUNT I (Breach of Section 3.8 of the SDR/DDR License)**

**PARAGRAPH NO. 175:**

SEC and SEA reallege and incorporate by reference Paragraphs 1-174 above as though fully set forth herein.

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<sup>4</sup> A copy of the opinion is attached as Exhibit B.

1 **RESPONSE TO PARAGRAPH NO. 175:**

2 Rambus incorporates by this reference each of its denials, allegations or assertions in its  
3 above responses to paragraphs 1-174, as if fully set forth herein.

4 **PARAGRAPH NO. 176:**

5 Section 3.8 of the SDR/DDR License requires Rambus to notify SEC of any lower  
6 effective royalty rate paid by any third party for specific products defined in the SDR/DDR  
7 License.

8 **RESPONSE TO PARAGRAPH NO. 176:**

9 Rambus admits that Section 3.8 provided: "If at any time during this Agreement, the  
10 royalty rate agreed to be paid or ordered to be paid by a Third Party, whether by settlement or by  
11 court or agency order, for products corresponding to SDR SDRAM, SDR SGRAM, DDR  
12 SDRAM, or DDR SGRAM is lower than that specified in Section 3.1(b) of this Agreement,  
13 Rambus shall notify Samsung, in writing, within ten (10) days of the effective date of such lower  
14 royalty rate and such lower royalty rate shall be effective for this Agreement the first day of the  
15 royalty reporting period in which written notice by Rambus is made. If the lower royalty rate is  
16 limited geographically due to a court or agency order, then Samsung's lower royalty rate shall be  
17 similarly limited to sales in the same geographic area. Should, by agreement, subsequent order,  
18 or amendment, modification, or reversal of the court or agency order (whether on appeal or  
19 otherwise), the lower royalty rate of any litigant change, then the royalty rate for Samsung shall  
20 change correspondingly, but not to exceed the rates specified in Section 3.1(b)." Except as  
21 expressly admitted, Rambus denies the allegations of paragraph no. 176.

22 **PARAGRAPH NO. 177:**

23 Rambus and Infineon entered into a license agreement during the Spring of 2005 (the  
24 "Rambus/Infineon License"). On information and belief, the Rambus/Infineon License provided  
25 for an effective royalty rate that was lower than that being paid by SEC under the SDR/DDR  
26 License.

27 **RESPONSE TO PARAGRAPH NO. 177:**

28 Rambus admits that it entered into a license agreement with Infineon during the Spring of

2005. Except as expressly admitted, Rambus denies the allegations of paragraph no. 177.

**PARAGRAPH NO. 178:**

Rambus failed to notify SEC of the lower effective royalty rate agreed to be paid by Infineon as provided for in the Rambus/Infineon License.

**RESPONSE TO PARAGRAPH NO. 178:**

Rambus denies the allegations of paragraph no. 178.

**PARAGRAPH NO. 179:**

Rambus breached Section 3.8 of the SDR/DDR License Agreement by failing to notify SEC of the lower effective royalty rate provided for in the Rambus/Infineon License.

**RESPONSE TO PARAGRAPH NO. 179:**

Rambus denies the allegations of paragraph no. 179.

**PARAGRAPH NO. 180:**

Section 3.8 of the SDR/DDR License required Rambus to adjust the royalty rate paid by SEC to match any lower effective royalty rate paid by a third party.

**RESPONSE TO PARAGRAPH NO. 180:**

Rambus admits that Section 3.8 provided: "If at any time during this Agreement, the royalty rate agreed to be paid or ordered to be paid by a Third Party, whether by settlement or by court or agency order, for products corresponding to SDR SDRAM, SDR SGRAM, DDR SDRAM, or DDR SGRAM is lower than that specified in Section 3.1(b) of this Agreement, Rambus shall notify Samsung, in writing, within ten (10) days of the effective date of such lower royalty rate and such lower royalty rate shall be effective for this Agreement the first day of the royalty reporting period in which written notice by Rambus is made. If the lower royalty rate is limited geographically due to a court or agency order, then Samsung's lower royalty rate shall be similarly limited to sales in the same geographic area. Should, by agreement, subsequent order, or amendment, modification, or reversal of the court or agency order (whether on appeal or otherwise), the lower royalty rate of any litigant change, then the royalty rate for Samsung shall change correspondingly, but not to exceed the rates specified in Section 3.1(b)." Except as expressly admitted, Rambus denies the allegations of paragraph no. 180.



1 **PARAGRAPH NO. 181:**

2 Rambus failed to adjust SEC's royalty rate following the execution of the  
3 Rambus/Infineon License.

4 **RESPONSE TO PARAGRAPH NO. 181:**

5 Rambus denies the allegations of paragraph no. 181.

6 **PARAGRAPH NO. 182:**

7 Rambus breached Section 3.8 of the SDR/DDR License by failing to adjust SEC's royalty  
8 rate based upon the lower effective royalty rate provided for in the Rambus/Infineon License.

9 **RESPONSE TO PARAGRAPH NO. 182:**

10 Rambus denies the allegations of paragraph no. 182.

11 **PARAGRAPH NO. 183:**

12 All conditions precedent have been met.

13 **RESPONSE TO PARAGRAPH NO. 183:**

14 Rambus denies the allegations of paragraph no. 183.

15 **PARAGRAPH NO. 184:**

16 SEC has suffered damages as a result of the breach by Rambus of Section 3.8 of the  
17 SDR/DDR License.

18 **RESPONSE TO PARAGRAPH NO. 184:**

19 Rambus denies the allegations of paragraph no. 184.

20 **COUNT II (Breach of Section 8.5 of the SDR/DDR License)**

21 **PARAGRAPH NO. 185:**

22 SEC and SEA reallege and incorporate by reference Paragraphs 1-184 above as though  
23 fully set forth herein.

24 **RESPONSE TO PARAGRAPH NO. 185:**

25 Rambus incorporates by this reference each of its denials, allegations or assertions in its  
26 above responses to paragraphs 1-184, as if fully set forth herein.

27 **PARAGRAPH NO. 186:**

28 Section 8.5 of the SDR/DDR License provides that SEC and Rambus will negotiate an

1 extension or renewal of the SDR/DDR License in good faith.

2 **RESPONSE TO PARAGRAPH NO. 186:**

3 Rambus admits that Section 8.5 provided: "Assuming that this Agreement has not been  
4 terminated and that Samsung is not in breach hereof, the parties shall meet, six (6) months before  
5 the expiration of this Agreement, to negotiate in good faith with a view to achieving a mutually  
6 satisfactory patent license agreement under the Rambus Patents with respect to the Licensed  
7 Products, including, without limitation, an extension hereof or a new agreement." Except as  
8 expressly admitted, Rambus denies the allegations of paragraph no. 186.

9 **PARAGRAPH NO. 187:**

10 Rambus failed to provide notice of certain terms of the Rambus/Infineon License as  
11 required under Section 3.8 of the SDR/DDR License, thereby precluding good faith negotiations  
12 for the extension or renewal of the SDR/DDR License.

13 **RESPONSE TO PARAGRAPH NO. 187:**

14 Rambus denies the allegations of paragraph no. 187.

15 **PARAGRAPH NO. 188:**

16 Rambus breached Section 8.5 of the SDR/DDR License by failing to provide SEC with  
17 notice of those certain terms of the Rambus/Infineon License as required under Section 3.8 of the  
18 SDR/DDR License. By withholding notice of the terms, Rambus did not and could not negotiate  
19 a new license agreement with SEC in good faith.

20 **RESPONSE TO PARAGRAPH NO. 188:**

21 Rambus denies the allegations of paragraph no. 188.

22 **PARAGRAPH NO. 189:**

23 All conditions precedent have been met.

24 **RESPONSE TO PARAGRAPH NO. 189:**

25 Rambus denies the allegations of paragraph no. 189.

26 **PARAGRAPH NO. 190:**

27 SEC has suffered damages as a result of the breach by Rambus of Section 8.5 of the  
28 SDR/DDR License.

**RESPONSE TO PARAGRAPH NO. 190:**

Rambus denies the allegations of paragraph no. 190.

**COUNT III (Breach of the Duty of Good Faith and Fair Dealing  
of Sections 3.8 and 8.5 of the SDR/DDR License)**

**PARAGRAPH NO. 191:**

SEC and SEA reallege and incorporate by reference Paragraphs 1-190 above as though fully set forth herein.

**RESPONSE TO PARAGRAPH NO. 191:**

Rambus incorporates by this reference each of its denials, allegations or assertions in its above responses to paragraphs 1-191, as if fully set forth herein.

**PARAGRAPH NO. 192:**

Under Section 9.1, the SDR/DDR License is to be governed by, and interpreted in accordance with, U.S. federal law and California law.

**RESPONSE TO PARAGRAPH NO. 192:**

Rambus admits that Section 9.1 of the Samsung/Rambus license executed in October 2000 provided as follows: "This agreement shall be governed by and interpreted in accordance with U.S. federal law or the laws of the State of California, without reference to conflict of laws principles." Except as expressly admitted, Rambus denies the allegations of paragraph no. 192.

**PARAGRAPH NO. 193:**

Under California law, Section 3.8 of the SDR/DDR License includes a duty of good faith and fair dealing owed by Rambus to SEC to inform SEC of the lower royalty rate provided for in the Rambus/Infineon License and to adjust Samsung's rate to the lower rate.

**RESPONSE TO PARAGRAPH NO. 193:**

The allegations in paragraph no. 193 constitute conclusions of law and therefore do not require a response. To the extent the allegations are deemed to constitute allegations of fact, Rambus denies the allegations of paragraph no. 193.

**PARAGRAPH NO. 194:**

Rambus failed to inform SEC of the lower royalty rate provided for in the

1 Rambus/Infineon License.

2 **RESPONSE TO PARAGRAPH NO. 194:**

3 Rambus denies the allegations of paragraph no. 194.

4 **PARAGRAPH NO. 195:**

5 Rambus breached the duty of good faith and fair dealing of the SDR/DDR License by  
6 failing to inform SEC of the lower effective royalty rate provided for in the Rambus/Infineon  
7 License.

8 **RESPONSE TO PARAGRAPH NO. 195:**

9 Rambus denies the allegations of paragraph no. 195.

10 **PARAGRAPH NO. 196:**

11 Under California law, the duty of good faith and fair dealing required by Rambus to adjust  
12 the royalty rate paid by SEC to match any lower effective royalty rate paid by a third party.

13 **RESPONSE TO PARAGRAPH NO. 196:**

14 The allegations in paragraph no. 196 constitute conclusions of law and therefore do not  
15 require a response. To the extent the allegations are deemed to constitute allegations of fact,  
16 Rambus denies the allegations of paragraph no. 196.

17 **PARAGRAPH NO. 197:**

18 Rambus failed to adjust the royalty rate paid by SEC to match the lower effective royalty  
19 rate provided for in the Rambus/Infineon License.

20 **RESPONSE TO PARAGRAPH NO. 197:**

21 Rambus denies the allegations of paragraph no. 197.

22 **PARAGRAPH NO. 198:**

23 Rambus breached the duty of good faith and fair dealing by failing to adjust the royalty  
24 rate paid by SEC to match the lower effective royalty rate provided for in the Rambus/Infineon  
25 License.

26 **RESPONSE TO PARAGRAPH NO. 198:**

27 Rambus denies the allegations of paragraph no. 198.

1 **PARAGRAPH NO. 199:**

2 Under California law, Section 8.5 of the SDR/DDR License includes a duty owed by  
3 Rambus to SEC to negotiate an extension or renewal of the SDR/DDR License in good faith.

4 **RESPONSE TO PARAGRAPH NO. 199:**

5 The allegations in paragraph no. 199 constitute conclusions of law and therefore do not  
6 require a response. To the extent the allegations are deemed to constitute allegations of fact,  
7 Rambus denies the allegations of paragraph no. 199.

8 **PARAGRAPH NO. 200:**

9 Rambus failed to provide notice of the terms of the Rambus/Infineon License to SEC,  
10 thereby precluding good faith negotiations for the extension or renewal of the SDR/DDR License.

11 **RESPONSE TO PARAGRAPH NO. 200:**

12 Rambus denies the allegations of paragraph no. 200.

13 **PARAGRAPH NO. 201:**

14 Rambus breached the duty of good faith and fair dealing of the SDR/DDR License by  
15 failing to provide notice of the terms of the Rambus/Infineon License to SEC. By withholding  
16 notice of the terms, Rambus did not and could not negotiate a new license agreement with SEC in  
17 good faith.

18 **RESPONSE TO PARAGRAPH NO. 201:**

19 Rambus denies the allegations of paragraph no. 201.

20 **PARAGRAPH NO. 202:**

21 All conditions precedent have been met.

22 **RESPONSE TO PARAGRAPH NO. 202:**

23 Rambus denies the allegations of paragraph no. 202.

24 **PARAGRAPH NO. 203:**

25 SEC has suffered damages as a result of the breach of the duty of good faith and fair  
26 dealing by Rambus of the SDR/DDR License.

27 **RESPONSE TO PARAGRAPH NO. 203:**

28 Rambus denies the allegations of paragraph no. 203.

**COUNT IV (Aiding and Abetting Breach of Fiduciary Duty to a Current Client)**

**PARAGRAPH NO. 204:**

SEC and SEA reallege and incorporate by reference Paragraphs 1-203 above as though fully set forth herein.

**RESPONSE TO PARAGRAPH NO. 204:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**PARAGRAPH NO. 205:**

As an in-house attorney for Samsung, Mr. Steinberg owed Samsung a fiduciary duty of utmost good faith and fair dealing and undivided loyalty and honesty in fact.

**RESPONSE TO PARAGRAPH NO. 205:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**PARAGRAPH NO. 206:**

By actively working for Rambus in secret and contrary to Samsung's interests during the time he was employed as an attorney for Samsung, Mr. Steinberg breached his fiduciary duty to Samsung.

**RESPONSE TO PARAGRAPH NO. 206:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

1 **PARAGRAPH NO. 207:**

2 While an employee for Samsung, Mr. Steinberg concealed his dual representation of  
3 Samsung and Rambus and represented to Samsung that he was not working for both Rambus and  
4 Samsung at the same time. Thus, Samsung had no notice of any deception on Mr. Steinberg's  
5 part and had no reason to investigate whether Mr. Steinberg worked for Rambus while employed  
6 as an attorney by Samsung.

7 **RESPONSE TO PARAGRAPH NO. 207:**

8 This Counterclaim is the subject of a currently pending motion to dismiss based on  
9 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
10 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
11 allegations.

12 **PARAGRAPH NO. 208:**

13 Mr. Steinberg's failure to disclose his breach of his fiduciary duty to Samsung further  
14 violated his fiduciary duty toward Samsung.

15 **RESPONSE TO PARAGRAPH NO. 208:**

16 This Counterclaim is the subject of a currently pending motion to dismiss based on  
17 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
18 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
19 allegations.

20 **PARAGRAPH NO. 209:**

21 Samsung was entitled to reasonably rely on Mr. Steinberg's silence because of its  
22 expectation that Mr. Steinberg would faithfully fulfill his fiduciary obligations.

23 **RESPONSE TO PARAGRAPH NO. 209:**

24 This Counterclaim is the subject of a currently pending motion to dismiss based on  
25 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
26 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
27 allegations.

1 **PARAGRAPH NO. 210:**

2 Because Samsung was justifiably misled by Mr. Steinberg's misrepresentation and  
3 concealment of facts surrounding his dual employment by Samsung and Rambus, it did not  
4 discover, nor was it put on notice to investigate, Mr. Steinberg's breach of fiduciary duties he  
5 owed to Samsung as a current client.

6 **RESPONSE TO PARAGRAPH NO. 210:**

7 This Counterclaim is the subject of a currently pending motion to dismiss based on  
8 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
9 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
10 allegations.

11 **PARAGRAPH NO. 211:**

12 Rambus knew that Mr. Steinberg was still employed as an attorney by Samsung when it  
13 engaged his services. It further knew that Samsung had not given permission for Mr. Steinberg to  
14 dually represent Samsung and Rambus. Rambus also knew of the fiduciary capacity in which Mr.  
15 Steinberg worked for Samsung and the duties that Mr. Steinberg owed to Samsung as a result.

16 **RESPONSE TO PARAGRAPH NO. 211:**

17 This Counterclaim is the subject of a currently pending motion to dismiss based on  
18 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
19 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
20 allegations.

21 **PARAGRAPH NO. 212:**

22 By engaging Mr. Steinberg to represent Rambus knowing Mr. Steinberg owed fiduciary  
23 duties to Samsung as a current client, Rambus aided and abetted Mr. Steinberg in breaching those  
24 fiduciary duties.

25 **RESPONSE TO PARAGRAPH NO. 212:**

26 This Counterclaim is the subject of a currently pending motion to dismiss based on  
27 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
28 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these



1 allegations.

2 **PARAGRAPH NO. 213:**

3 Rambus also knew that Mr. Steinberg had a duty to disclose to Samsung, a current client,  
4 any breach of his fiduciary duty, and that Mr. Steinberg in fact failed to carry out this duty. As a  
5 result, Rambus facilitated Mr. Steinberg's failure of his obligation to Samsung by secretly  
6 engaging Mr. Steinberg's services when it was aware that Mr. Steinberg was still employed as an  
7 attorney by Samsung.

8 **RESPONSE TO PARAGRAPH NO. 213:**

9 This Counterclaim is the subject of a currently pending motion to dismiss based on  
10 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
11 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
12 allegations.

13 **PARAGRAPH NO. 214:**

14 Rambus knew that hiring Mr. Steinberg while he was still employed by Samsung would  
15 be considered contrary to the purpose of maintaining a profitable business alliance between  
16 Rambus and Samsung. Nevertheless, Rambus concealed from Samsung that it had secretly  
17 engaged Mr. Steinberg's services when Rambus was aware that Mr. Steinberg was still employed  
18 as an attorney by Samsung and facilitated Mr. Steinberg's silence on his dual employment and,  
19 upon information and belief, his use of information about Samsung's business and DRAM  
20 products in working for Rambus. Rambus actively concealed Mr. Steinberg's role by sponsoring  
21 false testimony in different courts by Mr. Steinberg, and upon information and belief, even when  
22 grudgingly admitting in 2006 that he did in fact do some work for Rambus while employed by  
23 Samsung, misrepresenting the nature and scope of that work. Upon information and belief  
24 Rambus destroyed documents showing the nature and extent of Mr. Steinberg's work by Rambus  
25 in an effort to conceal his breach of duty and Rambus's role in it.

26 **RESPONSE TO PARAGRAPH NO. 214:**

27 This Counterclaim is the subject of a currently pending motion to dismiss based on  
28 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.

1 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
2 allegations.

3 **PARAGRAPH NO. 215:**

4 Rambus, by its concealment, falsely represented to Samsung that it was still interested in  
5 faithfully remaining a business partner with Samsung in their profitable business alliance at a  
6 time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to  
7 Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony,  
8 and upon information and belief continues to sponsor false testimony, as well as destruction of  
9 documents, to conceal this wrongdoing, Rambus had a duty to speak.

10 **RESPONSE TO PARAGRAPH NO. 215:**

11 This Counterclaim is the subject of a currently pending motion to dismiss based on  
12 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
13 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
14 allegations.

15 **PARAGRAPH NO. 216:**

16 SEC and SEA were harmed by Rambus's aiding and abetting Mr. Steinberg's breach of  
17 his fiduciary duty to Samsung.

18 **RESPONSE TO PARAGRAPH NO. 216:**

19 This Counterclaim is the subject of a currently pending motion to dismiss based on  
20 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
21 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
22 allegations.

23 **Applicable Statute of Limitations Tolloed by Discovery Rule**

24 **PARAGRAPH NO. 217:**

25 As a result of Mr. Steinberg's and/or Rambus's concealment of his dual representation of  
26 Samsung and Rambus, Samsung did not discover and could not have discovered the  
27 circumstances giving rise to a breach of Mr. Steinberg's fiduciary duties owed to Samsung while  
28 working for them, nor of Rambus's role in Mr. Steinberg's breach of his fiduciary duties, until it

1 was revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District Court for  
2 the Eastern District of Virginia in 2005. Specifically, heavily redacted legal invoices from Mr.  
3 Steinberg to Rambus dated in June of 1998, two months before Mr. Steinberg resigned from  
4 Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
5 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
6 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
7 1998. These documents and facts were not discoverable by Samsung or anyone else outside of  
8 Rambus before 2005, and would remain concealed today if Rambus had not included as entries  
9 on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.  
10 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not*  
11 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
12 Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and  
13 abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional  
14 interference with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair  
15 business practices. Finally, even though Samsung knew by at least October 2000 that Mr.  
16 Steinberg was working as in-house counsel for Rambus – a fact that by itself was not disturbing  
17 to Samsung for the reasons described herein – Samsung could not have discovered Mr.  
18 Steinberg's use of Samsung confidential information until documents showing the true nature of  
19 Mr. Steinberg's work at Rambus, including actively working to help Rambus plan patent  
20 prosecution and enforcement strategies against DRAM manufacturers including Samsung as  
21 outlined in paragraphs 102-109 above, were introduced for the first time during the *Infineon*  
22 unclean-hands trial in 2005. Once Rambus's employment of Neil Steinberg while an employee of  
23 Samsung was revealed to Samsung in 2005, however, Samsung was able to diligently investigate  
24 and pursue its claims against Rambus based on such conduct. Upon information and belief,  
25 Rambus and Mr. Steinberg continue to conceal the true nature and extent of their wrongdoing in  
26 testimony, interrogatory answers, and by documents previously destroyed.

27 **RESPONSE TO PARAGRAPH NO. 217:**

28 This Counterclaim is the subject of a currently pending motion to dismiss based on

1 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
2 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
3 allegations.

4 **Applicable Statute of Limitations Topped by Doctrine of Equitable Tolling**

5 **PARAGRAPH NO. 218:**

6 Furthermore, Mr. Steinberg's misrepresentations to Samsung while working for Samsung,  
7 coupled with Rambus's continued assurances that Samsung was a valued business partner, helped  
8 conceal material facts that prevented Samsung from knowing or discovering the nature and extent  
9 of the injury suffered due to Mr. Steinberg's dual representation. Mr. Steinberg's concealment of  
10 his dual representation when he was under a duty to disclose those facts prevented Samsung from  
11 discovering that a breach of Mr. Steinberg's fiduciary duty had occurred, as Samsung was not  
12 otherwise on notice that Mr. Steinberg had breached his fiduciary duty by his dual representation  
13 of Samsung and Rambus.

14 **RESPONSE TO PARAGRAPH NO. 218:**

15 This Counterclaim is the subject of a currently pending motion to dismiss based on  
16 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
17 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
18 allegations.

19 **PARAGRAPH NO. 219:**

20 Although Samsung knew at least by the time the SDR/DDR License was negotiated in  
21 October 2000 that Mr. Steinberg had gone to work for Rambus, Samsung was not thereby put on  
22 inquiry notice of its claims against Mr. Steinberg and Rambus relating to Mr. Steinberg's secret  
23 dual employment because, in light of the extensive, cooperative, and profitable business alliance  
24 that Samsung and Rambus had enjoyed since executing their first RDRAM license in 1994,  
25 Samsung knew of no reason to be alarmed at that time by Mr. Steinberg's employment at  
26 Rambus. Samsung also was not put on inquiry notice of its claims as a result of Rambus's  
27 institution of litigation against other DRAM manufacturers beginning in 2000 because Samsung  
28 was still licensed by Rambus at that time and continued to enjoy a friendly and profitable

business alliance with Rambus, leaving Samsung no reason to suspect that Mr. Steinberg had any improper involvement with Rambus's preparations for those litigations. Rather, it was not until documents and testimony revealing Mr. Steinberg's secret retention by Rambus at a time when he was still under an employment agreement as in-house counsel for Samsung, as well as his improper use of Samsung confidential information, were introduced for the very first time in connection with the *Infineon* unclean-hands trial in early 2005 that Samsung was put on inquiry notice of this claim.

**RESPONSE TO PARAGRAPH NO. 219:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**PARAGRAPH NO. 220:**

Rambus's concealment of its hiring of Mr. Steinberg while he was still an employee of Samsung and its affirmative misrepresentations to Samsung that it was still a faithful business partner to Samsung also helped conceal material facts that prevented Samsung from knowing or discovering the nature and extent of the injury suffered due to Mr. Steinberg's dual representation. Rambus's concealment of his dual representation prevented Samsung from discovering that a breach of Mr. Steinberg's fiduciary duty had occurred, as Samsung was not otherwise on notice that Mr. Steinberg had breached his fiduciary duty by his dual representation of Samsung and Rambus.<sup>5</sup>

**RESPONSE TO PARAGRAPH NO. 220:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.

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<sup>5</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect to Samsung's claims based on Neil Steinberg's dual employment, including aiding and abetting breach of fiduciary duty to a current client, in related litigation in Delaware on December 4, 2006. Based solely on the pleadings, the Delaware court found that Samsung raised a fact issue as to whether it was fraudulently induced to release its claims against Rambus upon execution of the SDR/DDR License. The relevant portions of the hearing transcript are attached as Exhibit C.

1 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
2 allegations.

3 **PARAGRAPH NO. 221:**

4 As a result, the misrepresentation and nondisclosure practiced by Mr. Steinberg and  
5 Rambus on Samsung, and the role Rambus played in Mr. Steinberg's misrepresentation and  
6 nondisclosure, was not discovered until Mr. Steinberg's dual employment was revealed for the  
7 first time during the trial of *Rambus v. Infineon*, in the U.S. District Court for the Eastern District  
8 of Virginia in 2005. Once Rambus's employment of Neil Steinberg was discovered by Samsung  
9 in 2005, Samsung was able to diligently investigate and pursue its claims against Rambus based  
10 on such conduct. Upon information and belief, Rambus and Mr. Steinberg continue to conceal the  
11 true nature and extent of their wrongdoing in testimony, interrogatory answers, and by documents  
12 previously destroyed.

13 **RESPONSE TO PARAGRAPH No. 221:**

14 This Counterclaim is the subject of a currently pending motion to dismiss based on  
15 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
16 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
17 allegations.

18 **COUNT V (Aiding and Abetting Breach of Fiduciary Duty to a Former Client)**

19 **PARAGRAPH NO. 222:**

20 SEC and SEA reallege and incorporate by reference Paragraphs 1-221 above as though  
21 fully set forth herein.

22 **RESPONSE TO PARAGRAPH NO. 222:**

23 This Counterclaim is the subject of a currently pending motion to dismiss based on  
24 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
25 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
26 allegations.

27 **PARAGRAPH NO. 223:**

28 As a former in-house attorney for Samsung, Mr. Steinberg owed Samsung those duties

1 due to a former client, including the duty to not disclose information about Samsung's business or  
2 to use it contrary to Samsung's interests, regardless of whether such information was trade secret,  
3 and the duty to obtain informed consent before representing parties adverse to Samsung in  
4 matters substantially related to those Mr. Steinberg worked on for Samsung.

5 **RESPONSE TO PARAGRAPH NO. 223:**

6 This Counterclaim is the subject of a currently pending motion to dismiss based on  
7 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
8 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
9 allegations.

10 **PARAGRAPH NO. 224:**

11 Despite these obligations to Samsung, Mr. Steinberg, upon information and belief,  
12 actively worked to help Rambus plan patent prosecution strategies, including actually working on  
13 patent applications, patent enforcement strategies, document handling and retention strategies for  
14 use in litigation, and to take other measures to extract royalties from manufacturers of DRAMs,  
15 including Samsung, as outlined in paragraphs 102-109 above. Mr. Steinberg did this without first  
16 obtaining informed consent from Samsung. Upon information and belief, Mr. Steinberg also used  
17 information about Samsung's business and DRAM products, as outlined in paragraphs 102-109  
18 above, including but not limited to facts developed for the prosecution of the '956 patent and  
19 strategies for protection of Samsung's JEDEC-compliant products as partially implemented in the  
20 '956 patent, product roadmaps (plans for development of future products and plans for their  
21 release), and Samsung's own internal licensing discussions and internal litigation strategy  
22 discussions, while working for Rambus at a time he was under a duty not to disclose such  
23 information about Samsung's business or to use it contrary to Samsung's interests, regardless of  
24 whether such information was trade secret.

25 **RESPONSE TO PARAGRAPH NO. 224:**

26 This Counterclaim is the subject of a currently pending motion to dismiss based on  
27 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
28 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these

1 allegations.

2 **PARAGRAPH NO. 225:**

3 Mr. Steinberg further violated his fiduciary duty to Samsung by failing to disclose to  
4 Samsung his work for Rambus that was contrary to Samsung's interests or his use of information  
5 obtained while an attorney for Samsung.

6 **RESPONSE TO PARAGRAPH NO. 225:**

7 This Counterclaim is the subject of a currently pending motion to dismiss based on  
8 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
9 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
10 allegations.

11 **PARAGRAPH NO. 226:**

12 Mr. Steinberg concealed from Samsung his work for Rambus that was adverse to  
13 Samsung and made use of Samsung information. Samsung, therefore, had no notice of any  
14 deception on Mr. Steinberg's part and therefore had no reason to investigate whether Mr.  
15 Steinberg's work for Rambus was adverse to Samsung or made use of Samsung information.

16 **RESPONSE TO PARAGRAPH NO. 226:**

17 This Counterclaim is the subject of a currently pending motion to dismiss based on  
18 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
19 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
20 allegations.

21 **PARAGRAPH NO. 227:**

22 Samsung was entitled to reasonably rely on Mr. Steinberg's silence because of its  
23 expectation that Mr. Steinberg would obtain informed consent before working on matters adverse  
24 to Samsung and would faithfully safeguard Samsung's information.

25 **RESPONSE TO PARAGRAPH NO. 227:**

26 This Counterclaim is the subject of a currently pending motion to dismiss based on  
27 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
28 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these



1 allegations.

2 **PARAGRAPH NO. 228:**

3 Because Samsung was justifiably misled by Mr. Steinberg's misrepresentation and  
4 concealment of facts regarding the full nature of the work he performed for Rambus, it did not  
5 discover, nor was it put on notice to investigate, Mr. Steinberg's breach of fiduciary duties he  
6 owed to Samsung as a former client.

7 **RESPONSE TO PARAGRAPH NO. 228:**

8 This Counterclaim is the subject of a currently pending motion to dismiss based on  
9 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
10 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
11 allegations.

12 **PARAGRAPH NO. 229:**

13 Rambus knew that Mr. Steinberg was employed as an attorney by Samsung. It further  
14 knew that Samsung had not given permission for Mr. Steinberg to work on matters adverse to  
15 Samsung or to disclose Samsung information. Rambus also knew of the fiduciary capacity in  
16 which Mr. Steinberg worked for Samsung and the duties that Mr. Steinberg continued to owe  
17 Samsung as a result of his former representation.

18 **RESPONSE TO PARAGRAPH NO. 229:**

19 This Counterclaim is the subject of a currently pending motion to dismiss based on  
20 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
21 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
22 allegations.

23 **PARAGRAPH NO. 230:**

24 By engaging Mr. Steinberg to represent Rambus knowing Mr. Steinberg owed fiduciary  
25 duties to Samsung as a former client, Rambus aided and abetted Mr. Steinberg in breaching those  
26 fiduciary duties.

27 **RESPONSE TO PARAGRAPH NO. 230:**

28 This Counterclaim is the subject of a currently pending motion to dismiss based on

1 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
2 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
3 allegations.

4 **PARAGRAPH NO. 231:**

5 Rambus also knew that Mr. Steinberg had a duty to disclose to Samsung, a former client,  
6 of any breach of his fiduciary duty, and that Mr. Steinberg in fact failed to carry out this duty. As  
7 a result, Rambus facilitated Mr. Steinberg's failure of his obligation to Samsung by secretly  
8 engaging Mr. Steinberg's services for matters adverse to Samsung and that made use of  
9 confidential Samsung information.

10 **RESPONSE TO PARAGRAPH NO. 231:**

11 This Counterclaim is the subject of a currently pending motion to dismiss based on  
12 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
13 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
14 allegations.

15 **PARAGRAPH NO. 232:**

16 Rambus knew that using Mr. Steinberg's services on matters adverse to Samsung or that  
17 made use of Samsung information would be considered contrary to the purpose of maintaining a  
18 profitable business alliance between Rambus and Samsung. Nevertheless, Rambus concealed  
19 from Samsung that it had secretly engaged Mr. Steinberg's services on matters adverse to  
20 Samsung or that, on information and belief, made use of Samsung information and facilitated Mr.  
21 Steinberg's silence on his work for Rambus on matters adverse to Samsung and, upon  
22 information and belief, his use of information about Samsung's business and DRAM products in  
23 working for Rambus.

24 **RESPONSE TO PARAGRAPH NO. 232:**

25 This Counterclaim is the subject of a currently pending motion to dismiss based on  
26 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
27 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
28 allegations.

1 **PARAGRAPH NO. 233:**

2 Rambus, by its concealment, falsely represented to Samsung that it was still interested in  
3 faithfully remaining a business partner with Samsung in their profitable business alliance at a  
4 time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to  
5 Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony,  
6 and upon information and belief continues to sponsor false testimony, as well as destruction of  
7 documents, to conceal this wrongdoing, Rambus had a duty to speak.

8 **RESPONSE TO PARAGRAPH NO. 233:**

9 This Counterclaim is the subject of a currently pending motion to dismiss based on  
10 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
11 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
12 allegations.

13 **PARAGRAPH NO. 234:**

14 SEC and SEA were harmed by Rambus's aiding and abetting Mr. Steinberg's breach of  
15 his fiduciary duty to Samsung.

16 **RESPONSE TO PARAGRAPH NO. 234:**

17 This Counterclaim is the subject of a currently pending motion to dismiss based on  
18 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
19 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
20 allegations.

21 **Applicable Statute of Limitations Tolloed by Discovery Rule**

22 **PARAGRAPH NO. 235:**

23 As a result of Mr. Steinberg's and/or Rambus's failure to disclose the full nature of his  
24 work for Rambus in violation of his continuing obligations to Samsung, Samsung did not  
25 discover and could not have discovered the circumstances giving rise to a breach of Mr.  
26 Steinberg's fiduciary duties owed to Samsung as a former client, nor of Rambus's role in Mr.  
27 Steinberg's breach of his fiduciary duties, until it was revealed for the first time during the trial of  
28 *Rambus v. Infineon*, in the U.S. District Court for the Eastern District of Virginia in 2005.

Specifically, heavily redacted legal invoices from Mr. Steinberg to Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned from Samsung, were produced by Rambus for the very first time in connection with the *Infineon* unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced by video at the unclean-hands trial that he performed legal services for Rambus beginning in June 1998. These documents and facts were not discoverable by Samsung or anyone else outside of Rambus before 2005, and would remain concealed today if Rambus had not included as entries on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998. Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not* performed any legal work for Rambus prior to August 17, 1998, the date he resigned from Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional interference with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair business practices. Finally, even though Samsung knew by at least October 2000 that Mr. Steinberg was working as in-house counsel for Rambus – a fact that by itself was not disturbing to Samsung for the reasons described herein – Samsung could not have discovered Mr. Steinberg's use of Samsung confidential information until documents showing the true nature of Mr. Steinberg's work at Rambus, including actively working to help Rambus plan patent prosecution and enforcement strategies against DRAM manufacturers including Samsung as outlined in paragraphs 102-109 above, were introduced for the first time during the *Infineon* unclean-hands trial in 2005. Once the full scope of Rambus's employment of Mr. Steinberg was revealed to Samsung in 2005, however, Samsung was able to diligently investigate and pursue its claims against Rambus based on such conduct. Upon information and belief, Rambus and Mr. Steinberg continue to conceal the true nature and extent of their wrongdoing in testimony, interrogatory answers, and by documents previously destroyed.

**RESPONSE TO PARAGRAPH NO. 235:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.

1 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
2 allegations.

3 **Applicable Statute of Limitations Topped by Doctrine of Equitable Tolling**

4 **PARAGRAPH NO. 236:**

5 Furthermore, Mr. Steinberg's misrepresentations to Samsung, coupled with Rambus's  
6 continued assurances that Samsung was a valued business partner, helped conceal material facts  
7 that prevented Samsung from knowing or discovering the nature and extent of the injury suffered  
8 due to Mr. Steinberg's employment by Rambus. Mr. Steinberg's failure to disclose the nature of  
9 his employment by Rambus when he was under a duty to do so prevented Samsung from  
10 discovering that a breach of Mr. Steinberg's fiduciary duty had occurred, as Samsung was not  
11 otherwise under notice that Mr. Steinberg had breached his fiduciary duty by working for Rambus  
12 on matters adverse to Samsung or that made use of Samsung information.

13 **RESPONSE TO PARAGRAPH NO. 236:**

14 This Counterclaim is the subject of a currently pending motion to dismiss based on  
15 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
16 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
17 allegations.

18 **PARAGRAPH NO. 237:**

19 Although Samsung knew at least by the time the SDR/DDR License was negotiated in  
20 October 2000 that Mr. Steinberg had gone to work for Rambus, Samsung was not thereby put on  
21 inquiry notice of its claims against Mr. Steinberg and Rambus relating to Mr. Steinberg's secret  
22 dual employment because, in light of the extensive, cooperative, and profitable business alliance  
23 that Samsung and Rambus had enjoyed since executing their first RDRAM license in 1994,  
24 Samsung knew of no reason to be alarmed at that time by Mr. Steinberg's employment at  
25 Rambus. Samsung also was not put on inquiry notice of its claims as a result of Rambus's  
26 institution of litigation against other DRAM manufacturers beginning in 2000 because Samsung  
27 was still licensed by Rambus at that time and continued to enjoy a friendly and profitable  
28 business alliance with Rambus, leaving Samsung no reason to suspect that Mr. Steinberg had any

1 improper involvement with Rambus's preparations for those litigations. Rather, it was not until  
2 documents and testimony revealing Mr. Steinberg's secret retention by Rambus at a time when he  
3 was still under an employment agreement as in-house counsel for Samsung, as well as his  
4 improper use of Samsung confidential information, were introduced for the very first time in  
5 connection with the *Infineon* unclean-hands trial in early 2005 that Samsung was put on inquiry  
6 notice of this claim.

7 **RESPONSE TO PARAGRAPH NO. 237:**

8 This Counterclaim is the subject of a currently pending motion to dismiss based on  
9 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
10 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
11 allegations.

12 **PARAGRAPH NO. 238:**

13 Rambus's concealment of its use of Mr. Steinberg's services on matters adverse to  
14 Samsung or that, upon information and belief, made use of Samsung information and its  
15 affirmative misrepresentations to Samsung that it was still a faithful business partner to Samsung  
16 also helped conceal material facts that prevented Samsung from knowing or discovering the  
17 nature and extent of the injury suffered due to Mr. Steinberg's work for Rambus. Rambus's  
18 concealment of his work for it prevented Samsung from discovering that a breach of Mr.  
19 Steinberg's fiduciary duty had occurred, as Samsung was not otherwise on notice that Mr.  
20 Steinberg had breached his fiduciary duty by his work for Rambus.<sup>6</sup>

21 **RESPONSE TO PARAGRAPH NO. 238:**

22 This Counterclaim is the subject of a currently pending motion to dismiss based on  
23 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
24 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these

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25 <sup>6</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect  
26 to Samsung's claims related to Neil Steinberg's dual employment, including aiding and abetting  
27 breach of fiduciary duty to a former client, in related litigation in Delaware on December 4, 2006.  
28 Based solely on the pleadings, the Delaware court found that Samsung raised a fact issue as to  
whether it was fraudulently induced to release its claims against Rambus upon execution of the  
SDR/DDR License. The relevant portions of the hearing transcript are attached as Exhibit C.

1 allegations.

2 **PARAGRAPH NO. 239:**

3 As a result, the misrepresentation and nondisclosure practiced by Mr. Steinberg and  
4 Rambus on Samsung, and the role Rambus played in Mr. Steinberg's misrepresentation and  
5 nondisclosure, was not revealed until the full scope of Mr. Steinberg's employment for Rambus  
6 was revealed for the first time during the trial of *Rambus v. Infineon*, in the U.S. District Court for  
7 the Eastern District of Virginia in 2005. Once the full scope of Rambus's employment of Neil  
8 Steinberg was discovered in 2005, Samsung was able to diligently investigate and pursue its  
9 claims against Rambus based on such conduct. Upon information and belief, Rambus and Mr.  
10 Steinberg continue to conceal the true nature and extent of their wrongdoing in testimony,  
11 interrogatory answers, and by documents previously destroyed.

12 **RESPONSE TO PARAGRAPH NO. 239:**

13 This Counterclaim is the subject of a currently pending motion to dismiss based on  
14 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
15 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
16 allegations.

17 **COUNT VI (Intentional Interference with Contract)**

18 **PARAGRAPH NO. 240:**

19 SEC and SEA reallege and incorporate by reference Paragraphs 1-239 above as though  
20 fully restated herein.

21 **RESPONSE TO PARAGRAPH NO. 240:**

22 This Counterclaim is the subject of a currently pending motion to dismiss based on  
23 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
24 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
25 allegations.

26 **PARAGRAPH NO. 241:**

27 Rambus was aware that Mr. Steinberg was employed as in-house counsel for Samsung  
28 and under a written employment contract for a specific term. Rambus was further aware that at

1 the time Mr. Steinberg's employment began with Rambus, his written employment contract had  
2 not been terminated and was still in effect. Also during this time, Rambus knew that Mr.  
3 Steinberg's contract included nondisclosure clauses and restrictions on additional employment.

4 **RESPONSE TO PARAGRAPH NO. 241:**

5 This Counterclaim is the subject of a currently pending motion to dismiss based on  
6 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
7 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
8 allegations.

9 **PARAGRAPH NO. 242:**

10 Despite these contractual duties, Mr. Steinberg, upon information and belief, actively  
11 worked to help Rambus plan patent prosecution strategies, including actually working on patent  
12 applications, patent enforcement strategies, document handling and retention strategies for use in  
13 litigation, and to take other measures to extract royalties from manufacturers of DRAMs,  
14 including Samsung, as outlined in paragraphs 102-109 above. Upon information and belief,  
15 while employed at Samsung, Mr. Steinberg also used information about Samsung's business and  
16 DRAM products in connection with his work for Rambus, as outlined in paragraphs 102-109  
17 above, including but not limited to facts developed for the prosecution of the '956 patent and  
18 strategies for protection of Samsung's JEDEC-compliant products as partially implemented in the  
19 '956 patent, product roadmaps (plans for development of future products and plans for their  
20 release), and Samsung's own internal licensing discussions and internal litigation strategy  
21 discussions, despite the fact that he was under contractual and fiduciary duties not to disclose  
22 such information about Samsung's business or use it contrary to Samsung's interests, regardless  
23 of whether such information was trade secret. Mr. Steinberg's work for Rambus, therefore, was  
24 in breach of his employment contract with Rambus.

25 **RESPONSE TO PARAGRAPH NO. 242:**

26 This Counterclaim is the subject of a currently pending motion to dismiss based on  
27 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
28 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these



1 allegations.

2 **PARAGRAPH NO. 243:**

3 Because Rambus knew of Mr. Steinberg's employment contract and his subsequent  
4 breach of that contract by performing services on behalf of Rambus, Rambus intentionally  
5 interfered with the Steinberg-Samsung employment contract when it hired Mr. Steinberg in  
6 February of 1998.

7 **RESPONSE TO PARAGRAPH NO. 243:**

8 This Counterclaim is the subject of a currently pending motion to dismiss based on  
9 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
10 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
11 allegations.

12 **PARAGRAPH NO. 244:**

13 Mr. Steinberg further violated his contractual duty to Samsung by failing to disclose the  
14 full nature and duration of his work for Rambus.

15 **RESPONSE TO PARAGRAPH NO. 244:**

16 This Counterclaim is the subject of a currently pending motion to dismiss based on  
17 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
18 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
19 allegations.

20 **PARAGRAPH NO. 245:**

21 Mr. Steinberg and Rambus concealed from Samsung Mr. Steinberg's work for Rambus  
22 that was contrary to Samsung's interests and that made use of Samsung information. Samsung  
23 had no notice of any breach of the employment contract by Mr. Steinberg's and therefore did not  
24 discover and had no reason to investigate whether Mr. Steinberg worked for Rambus while  
25 employed as an attorney by Samsung or was working for Rambus contrary to Samsung's interests  
26 and with Samsung information.

27 **RESPONSE TO PARAGRAPH NO. 245:**

28 This Counterclaim is the subject of a currently pending motion to dismiss based on

1 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
2 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
3 allegations.

4 **PARAGRAPH NO. 246:**

5 Samsung was entitled to reasonably rely on Mr. Steinberg's silence regarding Rambus's  
6 interference with his employment contract with Samsung because of its expectation that Mr.  
7 Steinberg would faithfully fulfill both his fiduciary and contractual obligations.

8 **RESPONSE TO PARAGRAPH NO. 246:**

9 This Counterclaim is the subject of a currently pending motion to dismiss based on  
10 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
11 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
12 allegations.

13 **PARAGRAPH NO. 247:**

14 Because Samsung was justifiably misled by Mr. Steinberg's misrepresentation and  
15 concealment of facts regarding the full nature of the work he performed for Rambus as well as the  
16 time period during which he worked for Rambus, it did not discover, nor was it put on notice to  
17 investigate, Mr. Steinberg's breach of contractual and fiduciary duties he owed to Samsung.

18 **RESPONSE TO PARAGRAPH NO. 247:**

19 This Counterclaim is the subject of a currently pending motion to dismiss based on  
20 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
21 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
22 allegations.

23 **PARAGRAPH NO. 248:**

24 Rambus knew of Mr. Steinberg's contractual obligations to Samsung, including his  
25 obligations to disclose the full nature and duration of his employment by Rambus. By secretly  
26 engaging Mr. Steinberg's services in contravention of these duties, therefore, Rambus  
27 intentionally interfered with Mr. Steinberg's employment contract with Samsung and facilitated  
28 Mr. Steinberg's violation of those duties.

**RESPONSE TO PARAGRAPH NO. 248:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**PARAGRAPH NO. 249:**

Rambus knew or should have known that the nature and duration of Mr. Steinberg's employment by Rambus would be considered contrary to the purpose of maintaining a profitable business alliance between Rambus and Samsung. Nevertheless, Rambus concealed from Samsung that it had secretly engaged Mr. Steinberg's services and facilitated Mr. Steinberg's silence on the full nature and duration of his work for Rambus.

**RESPONSE TO PARAGRAPH NO. 249:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**PARAGRAPH NO. 250:**

Rambus, by its concealment, falsely represented to Samsung that it was still interested in faithfully remaining a business partner with Samsung in their profitable business alliance at a time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony, and upon information and belief continues to sponsor false testimony, as well as destruction of documents, to conceal this wrongdoing, Rambus had a duty to speak.

**RESPONSE TO PARAGRAPH NO. 250:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

1     **PARAGRAPH NO. 251:**

2             SEC and SEA were harmed by Rambus's intentional interference with Mr. Steinberg's  
3     employment contract.

4     **RESPONSE TO PARAGRAPH NO. 251:**

5             This Counterclaim is the subject of a currently pending motion to dismiss based on  
6     Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
7     Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
8     allegations.

9                     **Applicable Statute of Limitations Tolled by Discovery Rule**

10    **PARAGRAPH NO. 252:**

11            As a result of the concealment of Mr. Steinberg's dual representation and of the full nature  
12    of the work he performed for Rambus, coupled with Rambus's continued assurances that  
13    Samsung was a valued business partner, Samsung did not discover and could not have discovered  
14    the circumstances giving rise to Rambus's interference of Mr. Steinberg's employment contract  
15    with Samsung until it was revealed for the first time during the trial of *Rambus v. Infineon*, in the  
16    U.S. District Court for the Eastern District of Virginia in 2005. Specifically, heavily redacted  
17    legal invoices from Mr. Steinberg to Rambus dated in June and July of 1998, two months before  
18    Mr. Steinberg resigned from Samsung, were produced by Rambus for the very first time in  
19    connection with the *Infineon* unclean-hands trial in early 2005. Furthermore, Mr. Steinberg  
20    testified in a deposition introduced by video at the unclean-hands trial that he performed legal  
21    services for Rambus beginning in June 1998. These documents and facts were not discoverable  
22    by Samsung or anyone else outside of Rambus before 2005, and would remain concealed today if  
23    Rambus had not included as entries on its *Infineon* privilege log two documents prepared by Mr.  
24    Steinberg in June and July of 1998. Indeed, Mr. Steinberg had previously falsely testified in 2001  
25    and again in 2004 that he had *not* performed any legal work for Rambus prior to August 17, 1998,  
26    the date he resigned from Samsung. Mr. Steinberg's perjury was a specific act of fraud that  
27    concealed Rambus's aiding and abetting of Mr. Steinberg's breaches of his fiduciary duties to  
28    Samsung, its intentional interference with Mr. Steinberg's employment contract with Samsung,

1 and Rambus's unfair business practices. Finally, even though Samsung knew by at least October  
2 2000 that Mr. Steinberg was working as in-house counsel for Rambus – a fact that by itself was  
3 not disturbing to Samsung for the reasons described herein – Samsung could not have discovered  
4 Mr. Steinberg's use of Samsung confidential information until documents showing the true nature  
5 of Mr. Steinberg's work at Rambus, including actively working to help Rambus plan patent  
6 prosecution and enforcement strategies against DRAM manufacturers including Samsung as  
7 outlined in paragraphs 102-109 above, were introduced for the first time during the *Infineon*  
8 unclean-hands trial in 2005. Once the full nature and duration of Rambus's employment of Mr.  
9 Steinberg was revealed to Samsung in 2005, however, Samsung was able to diligently investigate  
10 and pursue its claims against Rambus based on such conduct. Upon information and belief,  
11 Rambus and Mr. Steinberg continue to conceal the true nature and extent of their wrongdoing in  
12 testimony, interrogatory answers, and by documents previously destroyed.

13 **RESPONSE TO PARAGRAPH NO. 252:**

14 This Counterclaim is the subject of a currently pending motion to dismiss based on  
15 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
16 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
17 allegations.

18 **Applicable Statute of Limitations Tolted by Doctrine of Equitable Tolling**

19 **PARAGRAPH NO. 253:**

20 Furthermore, Mr. Steinberg's false representations to Samsung helped conceal material  
21 facts that prevented Samsung from knowing or discovering the nature and extent of the injury  
22 suffered due to Mr. Steinberg's employment by Rambus. Mr. Steinberg's concealment of the  
23 nature and duration of his employment by Rambus when he was under a duty to do so prevented  
24 Samsung from determining that Rambus had intentionally interfered with Mr. Steinberg's  
25 employment contract with Samsung, as Samsung was not otherwise under notice that Mr.  
26 Steinberg had breached his employment contract by working for Rambus while employed by  
27 Samsung and also by working for Rambus on matters adverse to Samsung or that made use of  
28 Samsung information.

**RESPONSE TO PARAGRAPH NO. 253:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**PARAGRAPH NO. 254:**

Although Samsung knew at least by the time the SDR/DDR License was negotiated in October 2000 that Mr. Steinberg had gone to work for Rambus, Samsung was not thereby put on inquiry notice of its claims against Mr. Steinberg and Rambus relating to Mr. Steinberg's secret dual employment because, in light of the extensive, cooperative, and profitable business alliance that Samsung and Rambus had enjoyed since executing their first RDRAM license in 1994, Samsung knew of no reason to be alarmed at that time by Mr. Steinberg's employment at Rambus. Samsung also was not put on inquiry notice of its claims as a result of Rambus's institution of litigation against other DRAM manufacturers beginning in 2000 because Samsung was still licensed by Rambus at that time and continued to enjoy a friendly and profitable business alliance with Rambus, leaving Samsung no reason to suspect that Mr. Steinberg had any improper involvement with Rambus's preparations for those litigations. Rather, it was not until documents and testimony revealing Mr. Steinberg's secret retention by Rambus at a time when he was still under an employment agreement as in-house counsel for Samsung, as well as his improper use of Samsung confidential information, were introduced for the very first time in connection with the *Infineon* unclean-hands trial in early 2005 that Samsung was put on inquiry notice of this claim.

**RESPONSE TO PARAGRAPH NO. 254:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

1 **PARAGRAPH NO. 255:**

2 Rambus's concealment of the full nature and duration of Mr. Steinberg's employment by  
3 Rambus and its affirmative misrepresentations to Samsung that it was still a faithful business  
4 partner to Samsung also helped conceal material facts that prevented Samsung from knowing or  
5 discovering the nature and extent of the injury suffered due to Mr. Steinberg's work for Rambus.  
6 Rambus's concealment of his work for it prevented Samsung from discovering that a breach of  
7 Mr. Steinberg's fiduciary duty had occurred, as Samsung was not otherwise on notice that Mr.  
8 Steinberg had breached his fiduciary duty by his work for Rambus.<sup>7</sup>

9 **RESPONSE TO PARAGRAPH NO. 255:**

10 This Counterclaim is the subject of a currently pending motion to dismiss based on  
11 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
12 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
13 allegations.

14 **PARAGRAPH NO. 256:**

15 As a result, the misrepresentation and nondisclosure practiced by Mr. Steinberg and  
16 Rambus on Samsung was not disclosed until the full scope and duration of Mr. Steinberg's  
17 employment for Rambus was revealed for the first time during the trial of *Rambus v. Infineon*, in  
18 the U.S. District Court for the Eastern District of Virginia in 2005. Once the full scope and  
19 duration of Rambus's employment of Neil Steinberg was disclosed to Samsung in 2005, Samsung  
20 was able to diligently investigate and pursue its claims against Rambus based on such conduct.  
21 Upon information and belief, Rambus and Mr. Steinberg continue to conceal the true nature and  
22 extent of their wrongdoing in testimony, interrogatory answers, and by documents previously  
23 destroyed.

24  
25 

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<sup>7</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect  
26 to Samsung's claims related to Neil Steinberg's dual employment, including intentional  
27 interference with contract, in related litigation in Delaware on December 4, 2006. Based solely  
28 on the pleadings, the Delaware court found that Samsung raised a fact issue as to whether it was  
fraudulently induced to release its claims against Rambus upon execution of the SDR/DDR  
License. The relevant portions of the hearing transcript are attached as Exhibit C.

1     **RESPONSE TO PARAGRAPH NO. 256:**

2             This Counterclaim is the subject of a currently pending motion to dismiss based on  
3     Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
4     Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
5     allegations.

6             **COUNT VII (Violation of California Bus. & Prof. Code Section 17200)**

7     **PARAGRAPH NO. 257:**

8             SEC and SEA reallege and incorporate by reference Paragraphs 1-256 above as though  
9     fully restated herein.

10    **RESPONSE TO PARAGRAPH NO. 257:**

11            This Counterclaim is the subject of a currently pending motion to dismiss based on  
12    Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
13    Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
14    allegations.

15    **PARAGRAPH NO. 258:**

16            The herein-described conduct of Rambus, including its hiring of Mr. Steinberg while still  
17    employed at Samsung, the "shred parties," and the persistent pursuit of patent claims beyond its  
18    original disclosures is an unlawful business practice and constitutes unfair and anticompetitive  
19    conduct toward Samsung, the DRAM industry, and the consuming public, in violation of  
20    California Business and Professions Code § 17200 *et. seq.*

21    **RESPONSE TO PARAGRAPH NO. 258:**

22            This Counterclaim is the subject of a currently pending motion to dismiss based on  
23    Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
24    Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
25    allegations.

26    **PARAGRAPH NO. 259:**

27            Rambus has engaged in at least the following unlawful, unfair, and anticompetitive  
28    business practices, and deceptive conduct:



1           a.       Misdemeanor spoliation of evidence in violation of California Penal Code  
2       § 135 as evident by the following facts: Rambus willfully destroyed or concealed documentary  
3       evidence to be produced in litigation against DRAM manufacturers with the intent to prevent it  
4       from being produced, as fully described herein;

5           b.       Aiding and abetting the breach of fiduciary duty to a current client as  
6       evidenced by the following facts: Rambus knew that Mr. Steinberg was still employed as an  
7       attorney by Samsung when it engaged his services. It further knew that Samsung had not given  
8       permission for Mr. Steinberg to dually represent Samsung and Rambus. Rambus also knew of the  
9       fiduciary capacity in which Mr. Steinberg worked for Samsung and the duties that Mr. Steinberg  
10      owed to Samsung as a result. By engaging Mr. Steinberg to represent Rambus knowing Mr.  
11      Steinberg owed fiduciary duties to Samsung as a current client, therefore, Rambus aided and  
12      abetted Mr. Steinberg in breaching those fiduciary duties, as fully described herein.

13          c.       Aiding and abetting the breach of fiduciary duty to a former client as  
14      evidenced by the following facts: Rambus knew that Mr. Steinberg was employed as an attorney  
15      by Samsung. It further knew that Samsung had not given permission for Mr. Steinberg to work  
16      on matters adverse to Samsung or to disclose Samsung information. Rambus also knew of the  
17      fiduciary capacity in which Mr. Steinberg worked for Samsung and the duties that Mr. Steinberg  
18      continued to owe Samsung as a result of his former representation. By engaging Mr. Steinberg to  
19      represent Rambus knowing Mr. Steinberg owed fiduciary duties to Samsung as a former client,  
20      therefore, Rambus aided and abetted Mr. Steinberg in breaching those fiduciary duties as fully  
21      described herein.

22          d.       Intentional interference with contract as evidenced by the following facts:  
23      Rambus knew of Mr. Steinberg's contractual obligations to Samsung, including his obligations to  
24      disclose the full nature and duration of his employment by Rambus. By secretly engaging Mr.  
25      Steinberg's services in contravention of these duties, therefore, Rambus intentionally interfered  
26      with Mr. Steinberg's employment contract with Samsung and facilitated Mr. Steinberg's  
27      violation of those duties as fully described in herein.

28          e.       Unfair and anticompetitive business practices against DRAM

1 manufacturers as a member of JEDEC as evidenced by the following facts: During the 1990's,  
2 Rambus participated actively in industry meetings on standards for SDRAMs and DDR SDRAMs  
3 at the Joint Electron Device Engineering Council ("JEDEC"). Rambus improperly used  
4 information it obtained as a result of its membership in JEDEC to secure additional patents and  
5 claims. Rambus's use of this information was in violation of policies applicable to all JEDEC  
6 members. Rambus failure to disclose to other members of JEDEC that it had taken information  
7 from JEDEC to craft its patent claims, only to seek to enforce its claims against JEDEC-  
8 compliant products many years after JEDEC members had invested heavily in the technology  
9 without notice of Rambus's conduct. This conduct was unfair and anticompetitive to all DRAM  
10 manufacturers that were members of JEDEC, including Samsung.

11 **RESPONSE TO PARAGRAPH NO. 259:**

12 This Counterclaim is the subject of a currently pending motion to dismiss based on  
13 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
14 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
15 allegations.

16 **PARAGRAPH NO. 260:**

17 As a result of Rambus's unfair, unlawful, and anticompetitive conduct, SEC and SEA, as  
18 well as the consuming public, have been damaged. Such injuries to SEC and SEA include, but  
19 are not limited to, the loss of money and property in the form of attorneys' fees paid to protect  
20 and assert SEC's and SEA's right against such unfair conduct, and lost revenues, profits, and  
21 market share.

22 **RESPONSE TO PARAGRAPH NO. 260:**

23 This Counterclaim is the subject of a currently pending motion to dismiss based on  
24 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
25 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
26 allegations.

27 **PARAGRAPH NO. 261:**

28 Samsung and the public at large, including manufacturers and end-users of DRAM and

1 DDR technology, will continue to sustain injury and damages from this unfair conduct by  
2 Rambus unless Rambus is enjoined from continuing its unlawful conduct. Samsung is entitled to  
3 recover reasonable attorneys' fees and costs in connection with this Count, as well as all  
4 appropriate restitution and other equitable relief.

5 **RESPONSE TO PARAGRAPH NO. 261:**

6 This Counterclaim is the subject of a currently pending motion to dismiss based on  
7 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
8 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
9 allegations.

10 **PARAGRAPH NO. 262:**

11 Rambus knew or should have known that its actions in engaging in unlawful and unfair  
12 business practices, and deceptive conduct would be considered contrary to the purpose of  
13 maintaining a profitable business alliance between Rambus and Samsung. Nevertheless, Rambus  
14 concealed from Samsung that it had secretly engaged in unlawful and unfair business practices,  
15 and deceptive conduct.

16 **RESPONSE TO PARAGRAPH NO. 262:**

17 This Counterclaim is the subject of a currently pending motion to dismiss based on  
18 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
19 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
20 allegations.

21 **PARAGRAPH NO. 263:**

22 Rambus, by its concealment, falsely represented to Samsung that it was still interested in  
23 faithfully remaining a business partner with Samsung in their profitable business alliance at a  
24 time when, as a result of its knowledge that Mr. Steinberg was breaching his fiduciary duties to  
25 Samsung at Rambus's request and on its behalf, and because Rambus sponsored false testimony,  
26 and upon information and belief continues to sponsor false testimony, as well as destruction of  
27 documents, to conceal this wrongdoing, Rambus had a duty to speak.  
28

1 **RESPONSE TO PARAGRAPH NO. 263:**

2 This Counterclaim is the subject of a currently pending motion to dismiss based on  
3 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
4 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
5 allegations.

6 **Applicable Statute of Limitations Tolled by Discovery Rule**

7 **PARAGRAPH NO. 264:**

8 Samsung did not discover and could not have discovered Rambus's destruction of  
9 documents in anticipation of litigation with Samsung, its unfair employment of Neil Steinberg, or  
10 the full nature and extent of the unfair and anticompetitive conduct by Rambus until the actions of  
11 Rambus and Mr. Steinberg were revealed publicly in a trial in *Rambus v. Infineon*, in the U.S.  
12 District Court for the Eastern District of Virginia in 2005. Specifically, voluminous Rambus  
13 documents produced for the very first time in connection with the *Infineon* unclean-hands trial in  
14 early 2005 catalogued Rambus's adoption of a document retention policy in early 1998, its  
15 massive destruction of documents during at least three separate company-wide "Shred Days," and  
16 its instructions to outside patent counsel to destroy numerous documents from his Rambus patent  
17 files – documents that a patent-infringement defendant might use to defend against Rambus's  
18 infringement claims. These documents and facts were not discoverable by Samsung or anyone  
19 else outside of Rambus before 2005, and would remain concealed today if the *Infineon* court had  
20 not broadly pierced Rambus's attorney-client privilege under the crime-fraud exception during  
21 preparations for the unclean-hands trial. In addition, heavily redacted legal invoices from Mr.  
22 Steinberg to Rambus dated in June and July of 1998, two months before Mr. Steinberg resigned  
23 from Samsung, were produced by Rambus for the very first time in connection with the *Infineon*  
24 unclean-hands trial in early 2005. Furthermore, Mr. Steinberg testified in a deposition introduced  
25 by video at the unclean-hands trial that he performed legal services for Rambus beginning in June  
26 1998. These documents and facts were not discoverable by Samsung or anyone else outside of  
27 Rambus before 2005, and would remain concealed today if Rambus had not included as entries  
28 on its *Infineon* privilege log two documents prepared by Mr. Steinberg in June and July of 1998.

1 Indeed, Mr. Steinberg had previously falsely testified in 2001 and again in 2004 that he had *not*  
2 performed any legal work for Rambus prior to August 17, 1998, the date he resigned from  
3 Samsung. Mr. Steinberg's perjury was a specific act of fraud that concealed Rambus's aiding and  
4 abetting of Mr. Steinberg's breaches of his fiduciary duties to Samsung, its intentional  
5 interference with Mr. Steinberg's employment contract with Samsung, and Rambus's unfair  
6 business practices. Finally, even though Samsung knew by at least October 2000 that Mr.  
7 Steinberg was working as in-house counsel for Rambus – a fact that by itself was not disturbing  
8 to Samsung for the reasons described herein – Samsung could not have discovered Mr.  
9 Steinberg's use of Samsung confidential information until documents showing the true nature of  
10 Mr. Steinberg's work at Rambus, including actively working to help Rambus plan patent  
11 prosecution and enforcement strategies against DRAM manufacturers including Samsung as  
12 outlined in paragraphs 102-109 above, were introduced for the first time during the *Infineon*  
13 unclean-hands trial in 2005. Once Rambus's unfair conduct was revealed to Samsung in 2005,  
14 however, Samsung was able to diligently investigate and pursue any potential claims against  
15 Rambus. Upon information and belief, Rambus and Mr. Steinberg continue to conceal the true  
16 nature and extent of their wrongdoing in testimony, interrogatory answers, and by documents  
17 previously destroyed.

18 **RESPONSE TO PARAGRAPH NO. 264:**

19 This Counterclaim is the subject of a currently pending motion to dismiss based on  
20 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
21 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
22 allegations.

23 **Applicable Statute of Limitations Tolled by Doctrine of Equitable Tolling**

24 **PARAGRAPH NO. 265:**

25 Furthermore, the concealment of their actions by Mr. Steinberg and Rambus prevented  
26 Samsung from knowing the full nature and extent of the injury suffered by Samsung due to  
27 Rambus's unfair and anticompetitive conduct. Although Samsung knew at least by the time the  
28 SDR/DDR License was negotiated in October 2000 that Mr. Steinberg had gone to work for

1 Rambus, Samsung was not thereby put on inquiry notice of its claims against Mr. Steinberg and  
2 Rambus relating to Mr. Steinberg's secret dual employment because, in light of the extensive,  
3 cooperative, and profitable business alliance that Samsung and Rambus had enjoyed since  
4 executing their first RDRAM license in 1994, Samsung knew of no reason to be alarmed at that  
5 time by Mr. Steinberg's employment at Rambus. Samsung also was not put on inquiry notice of  
6 its claims as a result of Rambus's institution of litigation against other DRAM manufacturers  
7 beginning in 2000 because Samsung was still licensed by Rambus at that time and continued to  
8 enjoy a friendly and profitable business alliance with Rambus, leaving Samsung no reason to  
9 suspect that Mr. Steinberg had any improper involvement with Rambus's preparations for those  
10 litigations. Rather, it was not until documents and testimony revealing Mr. Steinberg's secret  
11 retention by Rambus at a time when he was still under an employment agreement as in-house  
12 counsel for Samsung, as well as his improper use of Samsung confidential information, were  
13 introduced for the very first time in connection with the *Infineon* unclean-hands trial in early 2005  
14 that Samsung was put on inquiry notice of this claim

15 **RESPONSE TO PARAGRAPH NO. 265:**

16 This Counterclaim is the subject of a currently pending motion to dismiss based on  
17 Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations.  
18 Until the Court rules on that pending motion to dismiss, Rambus will defer answering these  
19 allegations.

20 **PARAGRAPH NO. 266:**

21 Rambus's concealment of its hiring of Mr. Steinberg while he was still an employee of  
22 Samsung and its affirmative misrepresentations to Samsung that it was still a faithful business  
23 partner to Samsung also helped conceal material facts that prevented Samsung from knowing or  
24 discovering the nature and extent of the injury suffered due to Rambus's unlawful, unfair, and  
25 anticompetitive conduct.<sup>8</sup>

26 <sup>8</sup> Tellingly, Vice Chancellor Strine denied Rambus's motion for summary judgment with respect  
27 to Samsung's claims related to Neil Steinberg's dual employment, including violation of Cal.  
28 Bus. & Prof. Code § 17200, in related litigation in Delaware on December 4, 2006. Based solely  
on the pleadings, the Delaware court found that Samsung raised a fact issue as to whether it was  
fraudulently induced to release its claims against Rambus upon execution of the SDR/DDR

**RESPONSE TO PARAGRAPH NO. 266:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**PARAGRAPH NO. 267:**

As a result, Samsung was not aware of the full nature and extent of the unfair and anticompetitive conduct by Rambus until the actions of Rambus and Mr. Steinberg were revealed during the trial of *Rambus v. Infineon*, in the U.S. District Court for the Eastern District of Virginia in 2005. Once Rambus's unfair conduct was disclosed, Samsung was able to diligently investigate and pursue any potential claims against Rambus. Upon information and belief, Rambus and Mr. Steinberg continue to conceal the true nature and extent of their wrongdoing in testimony, interrogatory answers, and by documents previously destroyed.

**RESPONSE TO PARAGRAPH NO. 267:**

This Counterclaim is the subject of a currently pending motion to dismiss based on Rambus's assertion that the Counterclaim is untimely and barred by the statute of limitations. Until the Court rules on that pending motion to dismiss, Rambus will defer answering these allegations.

**COUNT VIII (Declaratory Judgment of Noninfringement)****PARAGRAPH NO. 268:**

SEC and SEA reallege and incorporate by reference Paragraphs 1-267 above as though fully set forth herein.

**RESPONSE TO PARAGRAPH NO. 268:**

Rambus incorporates by this reference each of its denials, allegations or assertions in its above responses to paragraphs 1-267, as if fully set forth herein.

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License. The relevant portions of the hearing transcript are attached as Exhibit C.

**PARAGRAPH NO. 269:**

An actual and justiciable controversy exists between SEC, SEA and Rambus with respect to the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents because Rambus has brought this action against Defendants alleging that the Defendants infringe the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents. Absent a declaration of noninfringement, invalidity, and unenforceability, Rambus will continue to wrongfully assert the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents against the Defendants, and thereby cause SEC and SEA irreparable injury and damage.

**RESPONSE TO PARAGRAPH NO. 269:**

Rambus admits that it brought this action alleging that Samsung infringes certain Rambus patents and that Samsung purports to deny the allegations. Except as expressly admitted, Rambus denies the allegations of Paragraph 269.

**PARAGRAPH NO. 270:**

SEC and SEA have not infringed the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents, either directly or indirectly, literally or under the doctrine of equivalents, willfully, or otherwise, and SEC and SEA are entitled to a declaration to that effect.

**RESPONSE TO PARAGRAPH NO. 270:**

Rambus denies the allegations contained in paragraph no. 270.

**COUNT IX (Declaratory Judgment of Invalidity)****PARAGRAPH NO. 271:**

SEC and SEA reallege and incorporate by reference Paragraphs 1-270 above as though fully set forth herein.

**RESPONSE TO PARAGRAPH NO. 271:**

Rambus incorporates by this reference each of its denials, allegations or assertions in its above responses to paragraphs 1-270, as if fully set forth herein.

**PARAGRAPH NO. 272:**

An actual and justiciable controversy exists between SEC, SEA and Rambus with respect to the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents because Rambus has



1 brought this action against Defendants alleging that the Defendants infringe the '105, '263, '918,  
2 '195, '592, '152, '120, '020, '916, and '863 Patents. Absent a declaration of noninfringement,  
3 invalidity, and unenforceability, Rambus will continue to wrongfully assert the '105, '263, '918,  
4 '195, '592, '152, '120, '020, '916, and '863 Patents against the Defendants, and thereby cause  
5 SEC and SEA irreparable injury and damage.

6 **RESPONSE TO PARAGRAPH NO. 272:**

7 Rambus admits that it brought this action alleging that Samsung infringes certain Rambus  
8 patents and that Samsung purports to deny the allegations. Except as expressly admitted, Rambus  
9 denies the allegations of Paragraph 272.

10 **PARAGRAPH NO. 273:**

11 The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are invalid for  
12 failure to meet the "Conditions for Patentability" of 35 U.S.C. §§ 102 and 103 because the alleged  
13 inventions thereof are taught by, suggested by, and/or are obvious in view of, the prior art, and no  
14 claim of the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents can be validly  
15 construed to cover any Samsung device, system or operating method related to DRAM memory.  
16 Samsung is entitled to a declaration to that effect.

17 **RESPONSE TO PARAGRAPH NO. 273:**

18 Rambus denies the allegations contained in paragraph no. 273.

19 **PARAGRAPH NO. 274:**

20 The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are invalid for  
21 failure to meet the "Specification" requirements of 35 U.S.C. § 112 because the written  
22 specifications thereof do not describe the alleged inventions and the manner and process of  
23 making and using them in the form required by § 112, and no claim of the '105, '263, '918, '195,  
24 '592, '152, '120, '020, '916, and '863 Patents can be validly construed to cover any Samsung  
25 device, system or operating method related to DRAM memory. Samsung is entitled to a  
26 declaration to that effect.

27 **RESPONSE TO PARAGRAPH NO. 274:**

28 Rambus denies the allegations contained in paragraph no. 274.

**COUNT X (Declaratory Judgment of Unenforceability)****PARAGRAPH NO. 275:**

SEC and SEA reallege and incorporate by reference Paragraphs 1-274 above as though fully set forth herein.

**RESPONSE TO PARAGRAPH NO. 275:**

Rambus incorporates by this reference each of its denials, allegations or assertions in its above responses to paragraphs 1-274, as if fully set forth herein.

**PARAGRAPH NO. 276:**

An actual and justiciable controversy exists between SEC, SEA and Rambus with respect to the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents because Rambus has brought this action against Defendants alleging that the Defendants infringe the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents. Absent a declaration of noninfringement, invalidity, and unenforceability, Rambus will continue to wrongfully assert the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents against the Defendants, and thereby cause SEC and SEA irreparable injury and damage.

**RESPONSE TO PARAGRAPH NO. 276:**

Rambus admits that it brought this action alleging that Defendants infringe certain Rambus patents and that Defendants purport to deny the allegations. Except as expressly admitted, Rambus denies the allegations of Paragraph 276.

**PARAGRAPH NO. 277:**

The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are unenforceable under the provisions of Title 35, United States Code and the equitable doctrines of prosecution laches, unclean hands, and estoppel, and SEC and SEA are entitled to a declaration to that effect.

**RESPONSE TO PARAGRAPH NO. 277:**

Rambus denies the allegations contained in paragraph no. 277.

**PARAGRAPH NO. 278:**

Rambus unfairly filed multiple continuation applications over a long period of time. Because Rambus failed to timely prosecute the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents, the '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are unenforceable due to prosecution laches, and SEC and SEA are entitled to a declaration to that effect.

**RESPONSE TO PARAGRAPH NO. 278:**

Rambus denies the allegations contained in paragraph no. 278.

**PARAGRAPH NO. 279:**

The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are unenforceable based upon, at least, unclean hands, and SEC and SEA are entitled to a declaration to that effect.

**RESPONSE TO PARAGRAPH NO. 279:**

Rambus denies the allegations contained in paragraph no. 279.

**PARAGRAPH NO. 280:**

The '105, '263, '918, '195, '592, '152, '120, '020, '916, and '863 Patents are unenforceable as to all members of JEDEC including SEC, SEA, SSI, and SAS, due to estoppel.

**RESPONSE TO PARAGRAPH NO. 280:**

Rambus denies the allegations contained in paragraph no. 280.

**SEPARATE AFFIRMATIVE DEFENSES**

As separate and distinct affirmative defenses to the Counterclaims and purported causes of action contained therein, and each of them, Rambus alleges as follows:

**FIRST AFFIRMATIVE DEFENSE****(Failure to State Cause of Action)**

1. The Counterclaims, in whole or in part, fail to state facts sufficient to constitute a cause of action against Rambus.

**SECOND AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

2. Rambus is informed and believes and thereon alleges that the Counterclaims are barred, in whole or in part, by reason of the unclean hands of Samsung including but not limited to, spoliation of evidence.

**THIRD AFFIRMATIVE DEFENSE**

**(Issue Preclusion)**

3. Rambus is informed and believes and thereon alleges that the Counterclaims are barred, in whole or in part, by the doctrines of collateral estoppel and/or res judicata.

**FOURTH AFFIRMATIVE DEFENSE**

**(Waiver)**

4. Rambus is informed and believes and thereon alleges that by virtue of the knowledge, statements, and conduct of Samsung, as well as its respective agents, employees, or representatives, Samsung has waived any right to bring this action.

**FIFTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

5. Rambus is informed and believes and thereon alleges that Samsung, by virtue of its respective acts, omissions, conduct, statements, and/or representations, is estopped, in whole or in part, from bringing this action and asserting the relief requested in the Counterclaims

**SIXTH AFFIRMATIVE DEFENSE**

**(No Loss)**

6. Rambus is informed and believes and thereon alleges that Samsung has sustained no loss or damages as a result of the conduct of Rambus.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

7. Rambus is informed and believes and thereon alleges that the Counterclaims are barred, in whole or in part, because Samsung failed to mitigate its damages, if any.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Conduct of Third Parties)**

8. Rambus is informed and believes and thereon alleges that the Counterclaims are barred, in whole or in part, because the damages, if any, were caused by third parties for whom Rambus bears no responsibility.

**NINTH AFFIRMATIVE DEFENSE**

**(Samsung's Conduct)**

9. Rambus is informed and believes and thereon alleges that the Counterclaims are barred, in whole or in part, because the damages, if any, were caused by Samsung's conduct, including but not limited to its breach of contract, for which Rambus bears no responsibility.

**TENTH AFFIRMATIVE DEFENSE**

**(Business Justification)**

10. The alleged acts and/or omissions of Rambus are justified under the circumstances, in whole or in part, because Rambus acted reasonably to protect its business interests.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Ratification)**

11. The purported causes of action of Samsung are barred, in whole or in part, as Samsung has ratified and approved the purported actions of which it now complains.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

12. The Counterclaims are barred, in whole or in part, by the applicable statute of limitations.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Laches)**

13. Samsung, by its acts and conduct, and/or the acts and conduct of its predecessors, agents, or assigns, is barred, in whole or in part, from asserting claims against Rambus by the doctrine of laches.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Consent)**

14. Samsung's acts, conduct and/or statements, and/or the acts, conduct and statements of its predecessors, agents or assigns constituted consent to the alleged acts and/or conduct of Rambus set forth in the Counterclaims.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(No Standing Under Business & Professions**

**Code Section 17200)**

15. The claims of Samsung are barred, in whole or in part, because Samsung has not suffered injury in fact and have not lost money or property as a result of the alleged unfair competition of Rambus.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(First Amendment/Noerr-Pennington Doctrine)**

16. The claims of Samsung are barred, in whole or in part, because Rambus's alleged conduct is protected by the First Amendment to the United States Constitution and the Noerr-Pennington Doctrine.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Other Action Pending)**

17. The claims of Samsung are barred, in whole or in part, because of other actions pending in other state and federal courts.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(No Enforceable Contract)**

18. Rambus's attendance at certain committee meetings held by JEDEC does not give rise to any contractual claim or duty to disclose. Any alleged agreement between JEDEC and Rambus or JEDEC members and Rambus was not definite enough to make clear to Rambus what disclosure it was required to make, if any. Further, the lack of details in the EIA/JEDEC patent disclosure policies preclude a finding of any mutual assent when Rambus attended committee meetings held by JEDEC.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(California Litigation Privilege)**

19. The claims of Hynix are barred, in whole or in part, because Rambus's alleged conduct is privileged under the California litigation privilege.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Release)**

20. Samsung released its claims in the "SDR/DDR IC and SDR/DDR Memory Module Patent License Agreement Between Rambus Inc. and Samsung Electronics Co., Ltd," entered in October 2000.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Additional Defenses)**

21. Rambus presently has insufficient knowledge or information upon which to form a belief whether it may have additional, unstated affirmative defenses. On that basis, Rambus reserves the right to amend this reply to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses are appropriate.

WHEREFORE, Rambus prays for the following relief:

1. That Samsung take nothing by way of its Counterclaims;
2. That judgment be entered in favor of Rambus and against Samsung;
3. That the Counterclaims be dismissed in their entirety as to Rambus, with prejudice;
4. An award of Rambus's reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
5. For costs of suit incurred;
6. For such other and further relief as this Court may deem just and proper.

1 DATED: July 9, 2007

MUNGER, TOLLES & OLSON LLP

2 MCKOOL SMITH PC

3  
4 By: /s/ Carolyn Hoecker Luedtke

5 Carolyn Hoecker Luedtke

6 Attorneys for Plaintiff and Counterclaim Defendant  
7 RAMBUS INC.